TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 341.

ANTOINETTE THORMANN, PLAINTIFF IN ERROR,

vs.

ANDREW J. FRAME AND MAGDALENA FABACHER AND JACOB FABACHER, MINORS, BY D. S. TULLAR, THEIR GUARDIAN *AD LITEM*.

IN ERROR TO THE CIRCUIT COURT OF THE COUNTY OF MANITOWOC, STATE OF WISCONSIN.

FILED JULY 3, 1899.

(17,356.)

(17,455.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 341.

ANTOINETTE THORMANN, PLAINTIFF IN ERROR,

vs.

ANDREW J. FRAME AND MAGDALENA FABACHER AN
JACOB FABACHER, MINORS, BY D. S. TULLAR, THEI
GUARDIAN *AD LITEM.*

IN ERROR TO THE CIRCUIT COURT OF THE COUNTY OF WAU
KESHA, STATE OF WISCONSIN.

INDEX.

	Original.	Pri
Transcript from county court of Waukesha county	1	
Petition for probate of will	1	
Order for hearing petition	2	
Order appointing guardian *ad litem*	3	
Proof of publication of order for hearing	4	
Objections to probate of will	6	
Certified copy of will of Joseph Fabacher	9	
Order admitting will to probate, &c	12	
Bond of executor	15	
Letters testamentary	16	
Order limiting time to present claims, &c	17	
Order for notice of appeal	18	
Notice of appeal	19	
Bond on appeal	20	
Notice of appeal and service of same	22	
Oath of executor	23	
Minutes of proceedings	24	
Clerk's certificate	28	

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 19, 1899.

	Original.	Print.
Verdict of jury	29	20
Findings of fact	30	21
Conclusions of law	32	22
Judgment	34	24
Notice of entry of judgment	38	26
Exceptions to findings of fact and conclusions of law	39	27
Notice of appeal to Supreme Court	43	29
Bond on appeal to Supreme Court	44	29
Clerk's certificate	48	32
Remittitur from Supreme Court	49	33
Opinion of county judge on admitting will to probate	51	33
Assessment-roll for parish of Orleans, 1896, marked "M"	96	58
1895, marked "M"	97	60
1895, marked "O"	98	62
1896, marked "P"	99	64
1897, marked "Q"	100	66
Record of marriage of Joseph Fabacher and Magdaline Fray, July 27, 1874, marked "D"	101	68
Deposition of Mary Ann Schick	105	70
Interrogatories to Mary Ann Schick	111	73
Cross-interrogatories to Mary Ann Schick	115	76
Commission to take deposition of Mary Ann Schick	116	76
Record in case of Joseph Fabacher *vs.* Lawrence Fabacher, marked "F"	117	79
Petition	117	79
Sale of interest in restaurant and lease, Jos. Fabacher to Lawrence Fabacher	118	79
Summons	124	82
Sheriff's return	125	83
Answer	126	83
Act of default	133	86
Lease	136	88
Order fixing hearing	139	89
Notice of trial	140	90
Sheriff's return	141	90
Clerk's certificate	142	90
Certified extract from precinct register, marked "G"	144	91
Certified copy of poll book, marked H	146	93
Deed of Fabacher to Mrs. Josephine McEvers, January 9, 1895, marked "I"	149	94
Deed of Fabacher to Elizabeth Ann Pleasants, January 10, 1895, marked "J"	153	96
Deed of Fabacher to Theodore Broderick, June 11, 1895, marked "K"	158	99
Deed of Fabacher to Pauline Gross *et al.*, June 17, 1895, marked "L"	164	103
Judgment of divorce	169	105
Release, Marie Fabacher to Joseph Fabacher, marked "J J"	171	107
Certificate of marriage, Jos. Fabacher and Magdalena Frey, marked "M M"	173	108
Promissory note of Theodore Broderick, marked "I I"	174	108
Agreement between Michael Meyer and Joseph Fabacher, marked "A A"	175	108

	Original	Print.
Statement of personal property subject to taxation, marked "B B"	179	111
London Assurance Corporation papers, marked "C C"	182	113
Hanover Fire Insurance Company papers, marked "D D"	183	114
"E E"	184	115
"F F"	185	116
Register of Wisconsin electors, 1896, marked "G G"	186	117
Tax receipt, August 24, 1896, marked "R"	208	128
Tax certificate for 1895, marked "S"	210	129
Tax certificate for 1895, marked "T"	212	130
Tax certificate for 1896, marked "U"	214	130
Certificate of jury commission, marked "V"	216	131
Certified copy of record of death of Jos. Fabacher, marked "W"	218	132
Letters testamentary to Mrs. Antoinette Thormann	221	133
Petition and inventory, succession of Jos. Fabacher	222	134
Order appointing Mrs. Thormann administratrix	226	136
Proof of publication of order	227	136
Notice of appointment of B. Bruenn attorney	228	137
Oath of appraisers	228	137
Petition of Antoinette Thormann	229	138
Certificate of death of Jos. Fabacher	231	139
Clerk's and judge's certificate, marked "W³"	233	140
Deposition of Pauline Gross, marked "X"	235	141
Notice to take deposition of Pauline Gross	245	147
Interrogatories to Pauline Gross	246	148
Cross-interrogatories to Pauline Gross	249	150
Commission to take deposition of Pauline Gross	250	150
Deposition of Wm. C. Keeley, marked "Z"	252	153
Promissory note of Theo. Broderick, marked "7"	261	158
Promissory note of Theo. Broderick, marked "8"	262	158
Receipt of Jos. H. Fabacher to Jos. Fabacher, marked "9"	263	158
Promissory note of Theo. Broderick, marked "10"	264	158
Copy of Jos. Fabacher's account with Waukesha national bank, marked "11"	265	159
Agreement of Jos. A. Phiesy & Bros., May 4, 1895, marked "O O"	269	161
Deed, Jos. Fabacher to Lawrence Fabacher, November 21, 1894, marked "P P"	270	162
Power of attorney, Jos. Fabacher to Lawrence Fabacher, May 23, 1887, marked "2"	273	164
Naturalization papers of Jos. Fabacher, marked "A"	276	165
Record in divorce suit, Mrs. J. Fabacher *vs.* Jos. Fabacher, marked "B"	281	167
Petition	281	167
Citation	282	168
Answer	283	169
Testimony of Andreas Frey	283	169
Antony Frey	284	170
William Langheus	285	170
Mrs. J. Fabacher	286	171
Submission	287	171
Judgment	287	171
Certificates	288	172
Record in the matter of the succession of Joseph Fabacher	290	173
Certificates	290	173

	Original.	Print.
Petition for writ of sequestration	292	174
Bond for writ of sequestration	296	176
Petition to bond sequestration and order thereon	297	177
Answer and disclaimer of Lawrence Fabacher	299	178
Petition to amend order to bond, &c	299	178
Citations and service	301	179
Writ of sequestration, &c	303	180
Bond to sheriff	306	181
Petition for inventory, &c	308	183
Inventory	309	184
Petition for sale and order thereon	322	192
Petition for leave to file copy of protest, &c	324	193
Protest made part of inventory	325	194
Motion and order to discontinue	327	195
Inventory	328	195
Evidence before Commissioner Leopold in opposition to probate of will in Waukesha county, Wis.	345	199
Index	346	199
Testimony of Rev. Joseph Francis Lambert	348	200
Rev. Joseph Gerlach	354	204
Henry Tharp	360	208
Mathias Troye	361	209
Samuel H. Gross	375	217
Mrs. Antoinette Thormann	388	224
Miss Josephine Troye	398	229
Bernard Bruenn	404	233
John Keppler	407	234
Lee Scott	409	236
Wm. Palfrey	413	239
Jacob L. Baltz	421	243
Leopold Levy	425	245
Miss Emma Roth	431	248
Hugh J. McDonald	436	254
Dr. F. Loeber	439	252
Frank R. Johnson	449	258
Dr. Wm. Kohlman	457	262
Henry Tharp	461	265
David Goldstein	462	265
Notary's certificate	470	269
Stipulation to take testimony	471	270
Further evidence before Commissioner Leopold in opposition to probate of will in Waukesha County, Wis.	472	271
Index	474	271
Testimony of Mathew McEnery	475	271
Octave J. Morel	476	272
Bertie Sneed	479	274
Biographical sketch of Joseph Fabacher from "Times-Democrat" of March 4, 1897	481	275
W. W. Washburn	489	279
Exhibit 3—Photograph of Joseph Fabacher	490	279
Testimony of G. H. Wormuth	491	279
Lewis Graham	493	281
Joseph Davis	500	284

	Original.	Print.
Testimony of T. P. Thompson	502	285
Notary's certificate	508	288
Stipulation to take testimony	509	289
Evidence for proponents taken in New Orleans	510	290
Index	510	290
Stipulation as to testimony	511	290
Testimony of Henry Rice	513	291
Bernard McCloskey	526	300
Eugene May	528	301
Otto Thoman	533	304
Frank Pace	543	311
Joseph Schutten	548	314
Stipulation as to testimony	555	318
Testimony of Thomas Nicholson	557	319
Fritz Jahncke	561	322
Henry Wellman	571	328
Jeff. C. Wenck	576	331
R. A. Corbin	579	333
Christian Schopp	583	336
Henry Haller	591	341
George Wegmann	598	346
Peter Wegmann	609	352
John Malone	615	356
Joseph B. Taylor	617	358
Henry D. Hart	621	360
Simon Block	624	362
H. H. Hodgson	628	365
Notary's certificate	631	367
Stipulation to take testimony	633	368
Special findings by jury	635	369
Jury list	637	369
Findings of fact	638	370
Conclusions of law	641	372
Judgment	643	373
Order to send judgment-roll to Supreme Court	647	375
Notice of entry of judgment	649	376
Clerk's certificate	650	376
Order for jurors	651	377
Order for payment of attorneys' fees	652	377
Stipulation and order to withdraw fur coat and cap	654	378
Exceptions of contestant to findings of fact and conclusions of law	655	379
Stipulation and order as to time to file bill of exceptions	659	381
Order to show cause, &c.	660	382
Charge to jury	661	382
Stipulation and order extending time to file bill of exceptions	681½	396
Bill of exceptions	682	397
Offers by proponent	682	397
Testimony of E. Merton	682	397
Charles Newbury	684	398
Peter Fabacher	685	399
Offers by contestant	686	400
Testimony of Michael Meyer	697	407
W. L. Meyer	700	409

		Original.	Print.
Testimony of	W. G. Fryatt	701	409
	August Jacobson	703	411
	James Poole	705	413
	Anna Poole	707	414
	James Poole (recalled)	709	415
	William Parsons	709	415
	Charles McCumber	710	416
	P. Houlahan	712	417
	Elmer Putney	713	418
	Charles Taylor	713	418
	Charles McGovern	714	419
	John Wolf	715	420
	Charles Bergeler	716	420
	Fred Gaspar	717	421
	Frank Fuller	718	422
	Frank McKenzie	720	423
	Col. Enos	722	424
	J. J. Constantine	723	425
	Col. Enos (recalled)	726	427
	Oscar Sperber	730	430
	Col. Enos (recalled)	732	432
	James Dent	733	432
	Charles Trakel	736	434
	Wm. Leopold	737	435
	Jno. J. Clarke	738	436
	Rev. W. G. Miller	740	437
	E. K. Kimball	742	438
	Geo. Harding	742	439
	John Brickles	744	440
	Paul Christoph	746	441
	Michael Holman	747	442
	A. J. Frame	747	443
	E. Merton (recalled)	756	449
	Lawrence Fabacher	758	450
	Peter Fabacher	775	463
	Oscar Sperber (recalled)	780	466
	Father Miller (recalled)	780	466
Deposition of	Mary Ann Shick	782	467
	Wm. C. Keely	786	469
	Pauline Gross	789	470
	Rev. Joseph Francis Lambert	798	475
	Mathias Troye	800	476
	Samuel H. Gross	804	479
	Antoinette Thormann	808	482
	Josephine Troye	810	483
	John Keppler	812	484
	Lee Scott	812	484
	Wm. Palfrey	815	486
	Jacob L. Baltz	817	488
	Leopold Levy	818	488
	Emma Roth	819	489
	Hugh J. McDonald	820	489
	Wm. Kohlman	821	490

	Original.	Print.
Testimony of David Goldstein	822	490
Mathew McEnerny	825	492
Octave Morel	825	492
G. H. Wormuth	826	493
Statement of exhibits offered by contestant	828	493
Deposition of Henry Rice	847	508
Bernard McCloskey	852	511
Eugene May	853	512
Otto Thoman	854	513
Frank Pace	858	515
Joseph Schutten	860	516
Thomas Nicholson	862	517
Fritz Jahncke	864	518
Henry Wellman	867	520
Jeff. C. Wenck	869	521
R. A. Corbin	870	522
Christian Sholp	872	523
Henry Haller	874	524
George Wegmann	877	525
Peter Wegmann	880	527
John Malone	883	529
Joseph D. Taylor	884	529
Henry D. Hart	886	530
Simon Block	887	531
H. H. Hodgson	889	532
Dr. F. Loeber	891	533
Lewis Graham	893	534
T. P. Thompson	895	536
Statement of exhibits offered by proponent	898	537
Special verdict	903	540
Findings of fact and conclusions of law	904	541
Judgment	908	543
Exceptions to findings of fact and conclusions of law	912	545
Judge's certificate to bill of exceptions	915	547
Notice of filing remittitur	916	548
Order for attorney fees	917	549
Order fixing fee of guardian *ad litem*	919	550
Writ of error	921	551
Petition for writ of error	925	552
Assignment of errors	928	554
Bond on writ of error	932	556
Certificate of clerk of supreme court of Wisconsin to certain papers	935	558
Copy of writ of error	936	558
Citation	940	560
Acceptance of service of citation	941	560
Opinion of supreme court of Wisconsin	942	560
Certificate to opinion of supreme court of Wisconsin	957	570
Minutes of proceedings	958	571
Judge's certificate to clerk	962	573
Clerk's certificate to judge	962	573
Clerk's certificate and return to writ of error	963	574

1 STATE OF WISCONSIN, }
Waukesha County. }

To the county court of said county:

The petition of A. J. Frame respectfully show- that Joseph Fabacher lately died at New Orleans on the 3rd day of March, A. D. 1897; that he was at the time of his decease an inhabitant of the said county of Waukesha; that he left personal estate amounting to about the value of $65,000 and real estate in Wisconsin amounting to about the value of —, the annual rents and profits of which do not exceed $2,500: that he left him surviving (notice rule on back of petition) his widow, Magdalena Fabacher, and eleven children, viz., Lawrence, Joseph H., Albert, Anthony, Louis, Peter, John J., Barbara Bradrich (*née* Fabacher), Alis Fabacher, Magdalena Fabacher, and Jacob Fabacher, all of full age except the last two, Magdalena and Jacob, who are minors, next of kin and heirs-at-law, and Johannes Fabacher, a brother and legatee under said .

Your petitioner further shows that said deceased left a , duly made and executed, as petitioner is informed and believes, which is herewith presented to the court, and that your petitioner is named executor therein.

Wherefore your petitioner prays that said will may be proved and allowed as the last will and testament of said deceased and letters testamentary to A. J. Frame issued thereon according to .

Dated at Waukesha this 27 of March, A. D. 1897.

A. J. FRAME.

STATE OF WISCONSIN, }
Waukesha County, } *ss:*

A. J. Frame, the petitioner above named, being duly sworn, deposes and says that he heard read the foregoing petition by him subscribed and knows the contents thereof, and that the same is true to his own knowledge except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

A. J. FRAME.

Subscribed and sworn to before me this 27th day of March, A. D. 1897.

E. MERTON,
Notary Public.

[On back.]

Rule II, handed down by the supreme court Feb. 2, 1892, for the regulation of proceedings in probate, prescribes as follows:

"Petitions for probate of a will, or for administration, shall state also the names and residence of the widow, heirs and next of kin of the decedent, so far as known, or can with reasonable diligence be ascertained; who, if any, are minors or otherwise under disability, and the names and residences of their guardians, if any, in this State."

Same rule also provides that all petitions shall show the interest of the petitioner and his right to apply to the court.

[Endorsed:] State of Wisconsin, Waukesha county court. In the matter of the estate of Joseph Fabacher, deceased, testate. Petition for probate of will. Filed March 27, 1897. M. S. Griswold, Co. judge. Filed in circuit court, Waukesha Co., Wis., Oct. 30, 1897. C. W. Fraser, clerk. Filed July 7, 1898. Clarence Kellogg, clerk of supreme court Wis.

2 STATE OF WISCONSIN, }
Waukesha County. }

In County Court.

In the Matter of the Estate of JOSEPH FABACHER, Deceased.

On reading and filing an instrument in writing purporting to be the last will and testament of Joseph Fabacher, late of Waukesha county, deceased, and also the accompanying petition of A. J. Frame, representing, among other things, that the said Joseph Fabacher lately died an inhabitant of the said county of Waukesha, in Wisconsin, testate, and that A. J. Frame — named and appointed in said instrument as executor thereof, and praying that the said instrument may be proved and letters testamentary granted thereon according to law—

It is ordered that the said petition be heard before the said court at a regular term thereof to be held at the court-house, in said county, on the first Tuesday of May, A. D. 1897, being the 4th day of said month, at 10 o'clock in the forenoon of said day, or as soon thereafter as the parties can be heard.

And it is further ordered that notice of said hearing be given to all persons interested in said estate by publishing a copy of this order for three weeks successively previous to said hearing in the Waukesha Dispatch, a weekly newspaper printed and published in said county.

Dated March 27, A. D. 1897.

By the court:

M. S. GRISWOLD,
County Judge.

[Endorsed:] State of Wisconsin, Waukesha county court. In the matter of the estate of Joseph Fabacher, deceased, testate. Order for hearing petition for probate of will. Filed March 27, *day* 1897. M. S. Griswold, judge. Recorded in vol. —, page —. Filed in circuit court, Waukesha Co., Wis., Oct. 30, 1897. C. W. Fraser, clerk. Filed July 7, 1898. Clarence Kellogg, clerk of supreme court Wis.

3 STATE OF WISCONSIN, } ss.
Waukesha County. }

In the Matter of the Application for the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

An application being duly made by A. J. Frame, of Waukesha, Wis., the executor named therein, for the probate of the last will and testament of said Joseph Fabacher, deceased, and it appearing to the court that any order made or proceeding had in said matter directly affects the rights and interests of Magdalena Fabacher and Jacob Fabacher, minors, for whom no general guardian in said county of Waukesha has been appointed:

Now, therefore, by virtue of the power in this court vested, it is ordered that D. S. Tullar, Esq., an attorney admitted to practice in the circuit court, who is competent to understand the rights of such minors, who has no feeling or interest adverse to the rights of such minors, and is of sufficient pecuniary responsibility to pay any damage which may result from the negligence of such guardian *ad litem*, be, and is hereby, appointed guardian *ad litem* of said minor- for the sole purpose of appearing for them and taking care of their interests in the proceedings on said application.

Dated this 27th day of March, A. D. 1897.

By the court:

M. S. GRISWOLD,
County Judge.

I, D. S. Tullar, hereby consent to discharge the duties of guardian *ad litem* of Magdalena Fabacher and Jacob Fabacher, minors, to which I am appointed by the above order, to the best of my ability.

Dated March 27th, A. D. 1897.

D. S. TULLAR.

[Endorsed:] State of Wisconsin, Waukesha county court. In the matter of the application for probate of the will of Joseph Fabacher. Order appointing guardian *ad litem*. Filed March 27, '97. M.S. Griswold, Co. judge. Recorded in vol. —, page —. Filed in circuit court, Waukesha Co., Wis., Oct. 30, 1897. C. W. Fraser, clerk. Filed July 7, 1898. Clarence Kellogg, clerk of supreme court Wis.

4 STATE OF WISCONSIN, } ss.
Waukesha County, }

A. F. Warden, being duly sworn, says that he is the publisher and printer of the Waukesha Dispatch, a weekly newspaper printed and published in the village of Waukesha, county of Waukesha and State of Wisconsin, and that a notice, a printed copy of which is hereunto annexed, was published in said newspaper three successive weeks, commencing with the number of said paper published April 2, A. D. 1897, and ending with the paper published April 23, A. D.

1897, and, further, that the annexed printed copy of said notice was taken from the paper in which it was printed.

A. F. WARDEN.

Subscribed and sworn to before me this 4th day of May, A. D. 1897.

C. W. NEWBURY,
Notary Public, Waukesha County.

Fees, $—. Received payment.

[Endorsed:] Filed in circuit court, Waukesha Co., Wis., Oct. 30, 1897. C. W. Fraser, clerk. Filed July 7, 1898. Clarence Kellogg, clerk of supreme court Wis.

5 STATE OF WISCONSIN, }
Waukesha County. }

In County Court.

In the Matter of the Estate of JOSEPH FABACHER, Deceased.

On reading and filing an instrument in writing purporting to be the last will and testament of Joseph Fabacher, late of Waukesha county, deceased, and also the accompanying petition of A. J. Frame, representing, among other things, that the said Joseph Fabacher lately died an inhabitant of the said county of Waukesha, in Wisconsin, testate, and that A. J. Frame — named and appointed in said instrument as executor thereof, and praying that the said instrument may be proved and letters testamentary granted thereon according to law—

It is ordered that the said petition be heard before the said court at a regular term thereof to be held at the court-house, in said county, on the first Tuesday of May, A. D. 1897, being the 4th day of said month, at 10 o'clock in the forenoon of said day, or as soon thereafter as the parties can be heard.

And it is further ordered that notice of said hearing be given to all persons interested in said estate by publishing a copy of this order for three weeks successively previous to said hearing in the Waukesha Dispatch, a weekly newspaper printed and published in said county.

Dated March 27, A. D. 1897.

By the court:

M. S. GRISWOLD,
County Judge.

RYAN & MERTON, *Attorneys.*

[Endorsed:] County court, Waukesha Co. *Re* estate of Joseph Fabacher. Printer's aff. # 1. Filed May 4, 1897. M. S. Griswold, Co. judge. Filed in circuit court, Waukesha Co., Oct. 30, 1897. C. W. Fraser, clerk. Filed July 7, 1898. Clarence Kellogg, clerk of supreme court Wis.

6 STATE OF WISCONSIN, }
Waukesha County. }

In County Court.

In the Matter of the Estate of JOSEPH FABACHER, Deceased, Testate.

Now comes Antoinette Thorman, of the city of New Orleans, in the State of Louisiana, by her attorneys, Carney, Clasen & Walsh, and respectfully represents to this court:

That she is a daughter and sole heir-at-law of said Joseph Fabacher, deceased; that she objects to the allowance and probate of the instrument propounded by Andrew J. Frame, of the city of Waukesha, Wisconsin, as and for the last will and testament of said Joseph Fabacher, deceased, late of said city of New Orleans, Louisiana, and alleges as the grounds of her objections:

First.

That the deceased was formerly married to one Maria Ann Frey on or about the 13th day of May, A. D. 1850, at the city of New Orleans, in the State of Louisiana; that the issue of said marriage were two children, namely, Antoinette (Fabacher) Thorman, the contestant herein, and Andreas Fabacher, who died about ten years ago, unmarried and without issue; that said deceased and his said wife lived and cohabited as husband and wife from the date of said marriage up to 1864, at which time he, the deceased, deserted and abandoned his said wife and went to live in concubinage with Magdalena Frey, a sister of his said wife, and continued so to live until about January, 1874; that during the time said deceased so lived in adulterous concubinage with said Magdalena Frey eight illegitimate children were begotten to them, namely, Lawrence, Joseph H., Albert, Anthony, Louis, Peter, John J., Barbara Broderick (*née* Fabacher), all except said Lawrence Fabacher being named legatees in the said instrument propounded as the last will of said deceased.

7 That on the 12th day of January, A. D. 1874, his said wife, Maria Ann, instituted an action for divorce on the ground of adultery, and that a decree *a vinculo matrimonii* in said action was granted to said Maria Ann Fabacher on the 27th day of January, 1874, by the 5th district court of the parish of Orleans, in the State of Louisiana.

That thereafter said deceased married said Magdalena Frey at the city of New Orleans, in the State of Louisiana, and that the issue of said marriage were three illegitimate children, named Alice, Magdalena, and Jacob, all named as legatees in said instrument herein propounded for probate as the last will of said deceased; that continuously ever since 1843 up to and at the time of his death he, the said deceased, was domiciliated in the city of New Orleans, in the State of Louisiana, and an inhabitant and resident thereof, and that this court has no jurisdiction in the probate of said alleged last will and testament and in the settlement and distribution of said estate of said deceased.

Second.

That any attempt on the part of said Joseph Fabacher, deceased, to acquire or create a fictitious domicil, inhabitancy, or residence in the city of Waukesha, in Waukesha county, in the State of Wisconsin, was made with a fraudelent purpose and intent of depriving the said contestant, Antoinette Thormann, of her legitimate and hereditary rights as the sole heir-at-law of said deceased under the statutes of descent of the State of Louisiana.

Third.

That the execution of said last will and testament was procured by undue influence exercised over and upon the said Joseph Fabacher, deceased, to the extent of destroying his free will and agency in the execution thereof; that such undue influence was particularly exercised by Magdalena Fabacher, widow of said deceased, and by divers other persons and beneficiaries under said proposed last will and testament of said deceased.

8 Fourth.

That said instrument was not duly executed by the said Joseph Fabacher, deceased, as and for his last will and testament in the manner and form required by law.

Dated Waukesha, Wis., May 4th, A. D. 1897.

CARNEY, CLASEN & WALSH,
Attorneys for Antoinette Thormann.

[Endorsed:] State of Wis., Waukesha county, county court. In the matter of the estate of Joseph Fabacher. Objections to the probate of will. Filed May 4, 1897. M. S. Griswold, Co. judge. Filed in circuit court, Waukesha Co., Oct. 30th, 1897. C. W. Fraser, clerk. Filed July 7th, 1898. Clarence Kellogg, clerk of supreme court.

9 STATE OF WISCONSIN. }
County Court, Waukesha County. }

I, M. S. Griswold, judge of said county court, do hereby certify that the annexed written instrument was on the day of the date hereof, at the time and place fixed for that purpose, pursuant to notice duly given as provided by law, duly proved in our said county court as the last will and testament of Joseph Fabacher, late of said county, deceased, by the testimony of the subscribing witnesses thereto and sundry other witnesses produced upon the hearing and trial, both *in* the part of the proponent and contestant, and was by our said court, on said day, duly allowed as prescribed by law and probate thereof granted as and for the last will and testament of said deceased.

In testimony whereof I have hereunto set my hand and the seal of said court, at the city of Waukesha, Seal County Court. in said county, this 1st day of September, 1897.

M. S. GRISWOLD, *Judge.*

[Endorsed:] Filed in circuit court, Waukesha Co., Wis., Oct. 30, 1897. C. W. Fraser, clerk. Filed July 7, 1898. Clarence Kellogg, clerk of supreme court Wis.

10 I, Joseph Fabacher, of Waukesha, Wisconsin, being of sound mind and memory, but mindful of the uncertainties of human life, do make, publish and declare this, my last will and testament, hereby revoking all former wills, devises and bequests by me made.

First. I will and direct that all my just debts, funeral expenses and expenses of administaration be paid out of my personal estate.

Second. I donate and bequeath to my beloved wife, Magdalena the income from twenty thousand dollars of four per cent. New Orleans city bonds, to be paid to her by the executor or trustee of this, my last will and testament as collected by him, upon the express condition and provided however, that she, my said wife Magdalena, shall continue to live and cohabit with me as my wife and care for me in health and sickness until my death, otherwise she shall take nothing hereunder.

Third. I will and bequeath unto my brother Johannes Fabacher of Havre, France, an annuity of two hundred dollars, to be paid to him by the executor or trustee of this, my last will and testament, each year so long as he shall live, and at his death, the further sum of one hundred dollars to provide for his funeral expenses.

Fourth. All the rest, residue and remainder of my property, both real and personal, of whatsoever name or nature, and wheresoever situated, I give, devise and bequeath to my ten children, viz: Joseph H. Fabacher, Albert Fabacher, Anthony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Bradrich, *née* Fabacher, Alis Fabacher, Magdalena Fabacher and Jacob A. Fabacher, share and share alike, to each one-tenth part thereof, to have and to hold as their own forever.

Fifth. Upon the death of my said wife Magdalena, or upon the failure of the provision for her contained therein by reason of non-

11 performance on her part of the condition thereon, I will, devise and bequeath said twenty thousand dollars of four per cent. New Orleans City bonds to my said ten children, share and share alike, to each one-tenth part thereof.

Sixth. I nominate and appoint Andrew J. Frame of Waukesha, Wisconsin, sole executor and trustee of this, my last will and testament.

In witness whereof, I have hereunto set my hand and seal this 29th day of October, A. D. 1896.

JOSEPH FABACHER. [SEAL.]

Signed, sealed, published and declared by the said Joseph Fabacher, as and for his last will and testament, in presence of us, who, at his request, in his presence and in presence of each other, have hereunto subscribed our names as attesting witnesses.

ERNST MERTON, *Of Waukesha, Wisconsin.*

C. W. NEWBURY, *Of Waukesha, Wisconsin.*

[Endorsed:] Last will and testament of Joseph Fabacher, of Waukesha Co. Filed for probate March 27, 1897. M. S. Griswold, Co. judge. Filed in circuit court Waukesha Co., Wis., Oct. 30, 1897. C. W. Fraser, clerk. Filed July 7, 1898. Clarence Kellogg, clerk of supreme court Wis.

12 STATE OF WISCONSIN:

In County Court, Waukesha County.

In the Matter of the Estate of JOSEPH FABACHER, Deceased, and the Probate of His Last Will and Testament.

At a special term of said court held in and for said county of Waukesha, commencing on the third Tuesday (being the 17th day) of August, A. D. 1897, and on the 13th day of said term, to wit, on the 1st day of September, A. D. 1897.

Present: Hon. M. S. Griswold, judge of said court.

Pursuant to the order of our said court made in said matter on the 27th day of March, A. D. 1897, the application of A. J. Frame, praying that an instrument in writing, purporting to be the last will and testament of Joseph Fabacher, late of Waukesha, in said county, may be proved and admitted to probate, came on originally to be heard before our said court at the regular term thereof, held on the 4th day of May, 1897, due proof being then filed in said court that due notice of the time and place of said hearing had been given by publication to all persons interested, pursuant to law and said order, and upon the call of said matter for hearing at that time, the proponent having appeared by Ryan and Merton, his attorneys, in support of the probate of said instrument, and also D. S. Tullar, Esq., having appeared as guardian *ad litem*, under appointment of the court, of Magdalena and Jacob Fabacher, minor children of deceased, named as legatees in said instrument, upon the same side, and Antoinette Thorman, of the city of New Orleans, Louisiana, a child of said deceased, having appeared by Carney, Clasen and Walsh, her attorneys, in opposition to the probate of said instrument, and filed her objections thereto, and there-

13 after the hearing and trial of said matter having been adjourned to the 20th day of July, 1897, at which time the said matter came on for hearing and was duly tried before said court, appearing upon such trial all of said parties, by their respective attorneys, as before, and also Charles F. Buck, an attorney and counselor-at-law from the city of New Orleans, La., appearing as of counsel for the proponent, and E. Howard McCaleb, also an attorney and counselor-at-law from the same city, appearing on such trial as of counsel for the contestant, and upon the conclusion of such trial, counsel having been fully heard and the said matter then having been adjourned to and taken under advisement by the court until this time, and the same coming on now, pursuant to such adjournment, to be disposed of, and the court now here being fully advised in said matter and satisfied in regard to all the issues raised therein, and it satisfactorily appearing to our said court, upon all the proofs taken and filed

in said matter, that the said instrument so propounded for probate as the last will and testament of the said Joseph Fabacher was duly executed in all particulars as required by law; that the said Joseph Fabacher died at the city of New Orleans, Louisiana, where he was temporarily sojourning, on the 3rd day of March, A. D. 1897; that at the time of his death he was domiciled in and was an inhabitant of said county of Waukesha; that he left personal estate to be administered of the probable value of $65,000, and that at the time of executing the said instrument he was of full age and sound mind and in all respects competent to dispose of his estate, and was under no restraint; and our said court, being satisfied from the proofs aforesaid, that said instrument is genuine and valid, and that it is the last will and testament of said deceased:

Now, therefore, it is ordered, adjudged, and decreed that said instrument be admitted to probate and in all things established as the last will and testament of the said Joseph Fabacher, deceased.

It is further ordered that letters testamentary thereon be granted to Andrew J. Frame, the executor in said will named, upon
14 his giving a bond to the judge of the county court of said county of Waukesha, with such sureties as this court shall approve, in the penal sum of 100,000 *thousand* dollars.

By the court:

M. S. GRISWOLD,
County Judge.

And afterwards, to wit, on the 15th day of Sept., A. D. 1897, at the place aforesaid, the said Andrew J. Frame appeared and produced the bond required by the former order of this court, and the same being approved, which said bond is filed in the said county court.

Whereupon letters testamentary did issue to the said Andrew J. Frame under the seal of the court.

By the court:

M. S. GRISWOLD,
County Judge.

[Endorsed:] County court, Waukesha county. In the — estate of Joseph Fabacher, deceased. Will and order admitting will to probate. Ryan and Merton, att'ys for proponent. Filed September 1st, 1897. M. S. Griswold, Co. judge. Filed in circuit court, Waukesha Co., Oct. 30, 1897. C. W. Fraser, clerk. Filed July 7, 1898. Clarence Kellogg, clerk of supreme court Wis.

15 *Bond of Executor.*

Know all men by these presents that we, Andrew J. Frame, of the city of Waukesha, in the county of Waukesha, in the State of Wisconsin, as principal, and Frank H. Putney and Rich'd Weaver and Henry M. Frame, of the — of ——, in said county, as sureties, are held and firmly bound unto the Hon. M. S. Griswold, judge of the county court of the said county of Waukesha, in the sum of

one hundred thousand ($100,000) dollars, lawful money of the United States of America, to be paid to the said M. S. Griswold, judge of the county court aforesaid, or to his successors in office; to which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 14th day of September, A. D. 1897.

The condition of this obligation is such that if the above-bounden Andrew J. Frame, letters testamentary being to him issued as executor of the last will and testament of Joseph Fabacher, late of said county, deceased, shall:

1st. Make and return to the county court in and for the county of Waukesha, aforesaid, within three months, a true and perfect inventory of all the goods, chattels, rights, credits, and estate of the said Joseph Fabacher, deceased, whether disposed of by the will or not, which shall come to — possession or knowledge or to the possession of any other person for him;

2d. Administer according to law and to the will of the said Joseph Fabacher, deceased, all the goods, chattels, rights, credits, and estate of said deceased which shall at any time come to — possession or to the possession of any other person for him, and out of the same pay and discharge all debts, legacies, and charges chargeable on the same or such dividends thereon as shall be ordered and adjudged by the said county court;

3d. Render a true and just account of his administration to the said county court within one year and at any other time when required by the said court; and

4th. Perform all orders and judgments of the said county court by him to be performed: Then the above obligation to be void; otherwise to remain in full force and virtue.

ANDREW J. FRAME (*Principal*). [SEAL.]
FRANK H. PUTNEY (*Surety*). [SEAL.]
RICHARD WEAVER (*Surety*). [SEAL.]
HENRY M. FRAME (*Surety*). [SEAL.]

Sealed and delivered in presence of—

H. E. BLAIR.
WALTER R. FRAME.

STATE OF WISCONSIN, } ss:
Waukesha County, }

Frank H. Putney and Henry M. Frame, of the city of Waukesha, in said county, and Richard Weaver, of the town of Lisbon, in said county, being first duly sworn, do depose and say, and each for himself deposes and says, that he is a freeholder residing in said county of Waukesha, and is worth the sum — thirty-five thousand dollars, over and above all his just debts and liabilities, in property

within the State of Wisconsin and exclusive of all property exempt by law from execution.

FRANK H. PUTNEY.
RICHARD WEAVER.
HENRY M. FRAME.

Subscribed and sworn to before me this 14th day of September, 1897.

HENRY E. BLAIR,
Notary Public.

[Endorsed:] State of Wisconsin. Waukesha Co. court. In the matter of the estate of Joseph Fabacher, deceased. Executors' bond. Filed and approved this 15th day of September, 1897. M. S. Griswold, county judge. Recorded in vol. —, page —. Filed in circuit court, Waukesha Co., Wis., Oct. 30, 1897. C. W. Fraser, clerk. Filed Jul- 7, 1898. Clarence Kellogg, clerk of supreme court Wis.

16 STATE OF WISCONSIN:

County Court, Waukesha County.

The State of Wisconsin to all to whom these presents shall come, and especially to Andrew J. Frame, Greeting:

Know ye that whereas Joseph Fabacher, of the county of Waukesha aforesaid, lately died testate, and being at the time of his decease an inhabitant of said county, by means whereof the proving and allowing of his last will and testament and granting administration of all and singular the goods, chattels, rights, credits, and estate whereof he died possessed, and also the auditing, allowing, and finally discharging the account thereof, is within the jurisdiction of the county court of said county;

And whereas, on the 1st day of September, A. D 1897, at the court-house, in said county, at a term of our said county court holden by the Hon. M. S. Griswold, judge of our said court, the last will and testament of the said deceased was proved, allowed, and admitted to probate;

And whereas Andrew J. Frame, the executor named and appointed in and by said will, has given bond, as required by law, which said bond has been approved and filed in said court:

We, therefore, reposing full confidence in your integrity and ability, have granted, and by these presents do grant, the administration of all and singular the goods, chattels, rights, credits, and estate of the said deceased and any way concerning his last will and testament unto you, the said Andrew J. Frame, executor as aforesaid—

Hereby requiring you to make and return to the said court within three months a true and perfect inventory of all the goods, chattels, rights, credits, and estate of said deceased which shall come to your possession or knowledge or to the possession of any other person for you; to administer according to law and the will of said testa-

tor all the goods, chattels, rights, credits, and estate of said deceased which shall at any time come to your possession or to the possession of any other person for you, and out of the same to pay and discharge all debts, legacies, and charges chargeable on the same or such dividends thereon as shall be ordered and adjudged by said court; to render a true and just account of your administration to the said court within one year and at any other time when required by said court, and to perform all orders and judgments of the said court by you to be performed in the premises.

In testimony whereof we have caused the seal of our said county court to be hereunto affixed.

Seal County Court.

Witness the Hon. M. S. Griswold, judge of our said county court, at the city of Waukesha, this 15th day of September, A. D. 1897.

M. S. GRISWOLD, *Judge.*

[Endorsed:] State of Wisconsin. Waukesha county court. In the matter of the estate of Joseph Fabacher, deceased, testate. Letters testamentary. Rule of court: No executor or administrator shall pay any claim of any nature, in whole or in part, against the estate in his hands, unless the same shall have been first allowed by the court or commissioners, or upon the special order of the court. Recorded in vol. —, page —. Filed in circuit court, Waukesha Co., Wis., Oct. 30, 1897. C. W. Fraser, clerk. Filed Jul- 7, 1898. Clarence Kellogg, clerk of supreme court Wis.

17 STATE OF WISCONSIN, }
Waukesha County. }

In County Court.

In the Matter of the Estate of JOSEPH FABACHER, Deceased.

Letters testamentary on the estate of Joseph Fabacher, late of the city of Waukesha, in said county of Waukesha, deceased, having been granted to Andrew J. Frame by this court on the 15th day of September, 1897:

It is ordered that the time from the date hereof until and including the first Tuesday of May, A. D. 1898, be, and the same is hereby, fixed as the time within which all creditors of said Joseph Fabacher, deceased, shall present their claims for examination and allowance.

It is further ordered that all claims and demands of all persons against the said Joseph Fabacher, deceased, will be examined and adjusted before this court at the court-house, in the city of Waukesha, in said county, at a regular term thereof, appointed to be held on the first Tuesday of March, 1898, and on the first Tuesday of May, 1898, and all creditors are hereby notified thereof.

It is further ordered that notice of the time and place at which said claims and demands will be examined and adjusted, as aforesaid, and of the time above limited for said creditors to present their claims and demands be given by publishing a copy of this order and notice for four consecutive weeks, once in each week, in

the Waukesha Dispatch, a weekly newspaper published in the city of Waukesha, in said county, the first publication to be within fifteen days from the date hereof.

Dated September 15th, 1897.

By the court:

M. S. GRISWOLD,
County Judge.

RYAN & MERTON,
Att'ys for Estate.

[Endorsed:] Waukesha county court, in probate. In the matter of the estate of Joseph Fabacher, deceased. Order limiting time to present claims and notice to creditors. Filed this 15th day of Sept., A. D. 1897. M. S. Griswold, county judge. Recorded in Book —, vol. —, page —. Filed in circuit court, Waukesha Co., Wis., Oct. 30, 1897. C. W. Fraser, clerk. Filed June 7, 1898. Clarence Kellogg, clerk of supreme court Wis.

18 STATE OF WISCONSIN, }
Waukesha County. }

In County Court.

In the Matter of the Estate of JOSEPH FABACHER, Deceased.

Antoinette Thorman, contestant herein and heir-at-law of said Joseph Fabacher, deceased, having filed her notice of appeal to the circuit court of Waukesha county from the order of the county court of Waukesha county, Wisconsin, made on the 1st day of September, A. D. 1897, overruling her objections and admitting to probate a certain instrument propounded by Andrew J. Frame as and for the last will and testament of said Joseph Fabacher, deceased—

It is ordered that she give notice thereof to Andrew J. Frame, proponent in said matter and an adverse party, by personal service thereof upon Ryan & Merton, his attorneys of record herein, and to Magdalena Fabacher and Jacob Fabacher, minor children of said deceased, and also adverse parties, by personal service upon D. S. Tullar, Esq., their guardian *ad litem* herein, of a copy of such notice, service of such notice to be made within ten days from date hereof.

Dated this 13th day of October, 1897.

By the court:

M. S. GRISWOLD,
County Judge.

[Endorsed:] Waukesha county county court. In the matter of the estate of Joseph Fabacher, deceased. Order for notice to adverse parties. Filed Oct. 13th, 1897. M. S. Griswold, Co. judge. Filed in circuit court, Waukesha county, Wis., Oct. 30, 1897. C. W. Fraser, clerk. Filed July 7th, 1898. Clarence Kellogg, clerk of supreme court Wis.

19 STATE OF WISCONSIN, }
Waukesha County. }

In County Court.

In the Matter of the Estate of JOSEPH FABACHER, Deceased.

Notice is hereby given that Antoinette Thormann, contestant herein and heir-at-law of said Joseph Fabacher, deceased, being aggrieved by the order of the county court of Waukesha county, Wisconsin, made on the first day of September, A. D. 1897, overruling her objections and admitting to probate a certain instrument propounded by Andrew J. Frame as and for the last will and testament of said Joseph Fabacher, deceased, hereby appeals therefrom to the circuit court of said county.

Dated this 13th day of October, A. D. 1897.

CARNEY, CLASEN & WALSH,
Attorneys for Appellants.

[Endorsed:] Waukesha Co. county court. In the matter of the estate of Joseph Fabacher, deceased. Notice of appeal. Filed Oct. 13th, 1897. M. S. Griswold. Co. judge. Filed in circuit court, Waukesha Co., Wis., Oct. 30th, 1897. C. W. Fraser, clerk. Filed July 7th, 1898. Clarence Kellogg, clerk of supreme court Wis.

20 STATE OF WISCONSIN, }
Waukesha County. }

In County Court.

In the Matter of the Estate of JOSEPH FABACHER, Deceased.

Whereas Antoinette Thormann, *née* Fabacher, contestant and heir-at-law of said Joseph Fabacher, deceased, intends to appeal from the order of the county court of Waukesha county, Wisconsin, made on the 1st day of September, A. D. 1897, overruling her objections and admitting to probate a certain instrument propounded by Andrew J. Frame as and for the last will and testament of said Joseph Fabacher, deceased, to the circuit court in and for Waukesha county, Wisconsin:

Now, therefore, the National Surety Company, a corporation under the laws of the State of New York, by its proper officers, do hereby undertake in the sum of five hundred dollars ($500.00) that the said Antoinette Thorman, *née* Fabacher, contestant herein, will diligently prosecute her appeal to affect and to pay all damages and costs which may be awarded against her on such appeal.

Witness the signature and corporate seal of said National Surety Company hereto affixed by order and authority of the board of directors of said company this 6th day of October, A. D. 1897.

NATIONAL SURETY COMPANY,
By WM. BIGELOW, *Res. Vice-Pres't, and*
ROBERT CAMP, *Res. Ass't Sec'y.*

Witnesses:
WM. C. FROEMKE.
P. O. KANNENBERG.

21 STATE OF WISCONSIN, } ss:
County of Milwaukee, }

On this 6th day of October, one thousand eight hundred and ninety-seven, before me personally came Wm. Bigelow, known to be the resident vice-president of the National Surety Company, the corporation described in and which executed the within and foregoing bond on Antoinette Thorman, *née* Fabacher, as a surety thereon, and who, being by me duly sworn, did depose and say that he resides in the city of Milwaukee, State of Wisconsin; that he is the res. vice-president of said company and knows the corporate seal thereof; that the said National Surety Company is duly and legally incorporated under the laws of the State of New York; that said company has complied with the provisions of the act of Congress of August 13, 1894; that the seal affixed to the within bond of Antoinette Thorman, *née* Fabacher, is the corporate seal of said company and was thereto affixed by order and authority of the board of directors of said company, and that he signed his name thereto by like order and authority as resident vice-president of said company, and that he is acquainted with Robert Camp and knows him to be the res. ass't secretary of said company, and that the signature of said Robert Camp subscribed to said bond is in the genuine handwriting of said Robert Camp and was thereto subscribed by order and authority of said board of directors and in the presence of said deponent, and that the assets of said company unincumbered and liable to execution exceed its claims, debts, and liabilities of every nature whatsoever by more than the sum of five hundred thousand dollars.

The Milwaukee Trust Company is our agent to acknowledge service in the judicial district wherein this bond is given.

WM. BIGELOW.

Sworn to, acknowledged before me, and subscribed in my presence this 6th day of October, 1897.

[SEAL.] P. O. KANNENBERG,
Notary Public, Milwaukee Co., Wis.

I, William A. Fricke, commissioner of insurance for the State of Wisconsin, do hereby certify that, from the certificates and other evidences on file in my office, it appears that the National Surety Company of the City of New York, the surety executing the within bond or undertaking as surety thereon, is solvent to an amount of at least four times the penalty set forth in said bond or undertaking.

In witness whereof I have hereunto set my hand and official seal, at Madison, this 6th day of October, A. D. 1897.

EMIL GILJOHANN,
Dep. Commissioner of Insurance.

[Endorsed:] Waukesha county, county court. In the matter of the estate of Joseph Fabacher, deceased. Undertaking on appeal. The within undertaking on appeal accepted, approved, and filed this 13th day of October, 1897. M. S. Griswold, Co. judge.

22 STATE OF WISCONSIN:

In County Court, Waukesha County.

In the Matter of the Estate of JOSEPH FABACHER, Deceased.

Notice is hereby given that Antoinette Thormann, contestant herein and heir-at-law of said Joseph Fabacher, deceased, being aggrieved by the order of the county court of Waukesha county, Wisconsin, made on the first day of September, A. D. 1897, overruling her objections and admitting to probate a certain instrument propounded by Andrew J. Frame as and for the last will and testament of said Joseph Fabacher, deceased, hereby appeals therefrom to the circuit court of said county.

Dated this 13th day of October, A. D. 1897.

CARNEY, CLASEN & WALSH,
Attorneys for Appellants.

[Endorsed:] Original. Waukesha county, county court. In the matter of the estate of Joseph Fabacher, deceased. Notice — appeal to circuit court and proof of service. Due service of a copy of within notice of appeal admitted this 14th day of October, A. D. 1897. Ryan and Merton, atto's for proponent. D. S. Tullar, guardian *ad litem* for Mag-alena Fabacher and Jacob Fabacher, minors. Filed Oct. 15, 1897. M. S. Griswold, Co. judge. Filed in circuit court, Waukesha Co., Oct. 30, 1897. C. W. Fraser, clerk. Filed July 7th, 1898. Clarence Kellogg, clerk of supreme court Wis.

23 In County Court, Waukesha County, State of Wisconsin.

In the Matter of the Estate of JOSEPH FABACHER, Deceased.

STATE OF WISCONSIN, } ss:
Waukesha County, }

I, Andrew J. Frame, having been appointed executor of the last will and testament of Joseph Fabacher, late of Waukesha county, in Wisconsin, deceased, and having heretofore duly qualified as such executor under the laws of Wisconsin by filing my bond as such executor in said court, duly approved, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Wisconsin, and will in all things faithfully discharge the duties of the office and trust of executor of said will according to law and the best of my ability, so help me God.

ANDREW J. FRAME.

Subscribed and sworn to before me this 20th day of October, 1897.

M. S. GRISWOLD,
County Judge of Waukesha Co., Wis.

The foregoing oath was taken by Andrew J. Frame as executor of the will of Joseph Fabacher, deceased, this day *ex gratia*, the laws

of the State of Wisconsin not requiring and executor to take an oath of office as a qualification thereto.

Dated Oct. 21, 1897.

M. S. GRISWOLD,
County Judge of Waukesha County, Wis.

[Endorsed:] State of Wisconsin, Waukesha Co. In estate of Joseph Fabacher, deceased. Oath of Andrew J. Frame as executor. Taken and filed Oct. 20th, 1897. M. S. Griswold, Co. judge.

24 STATE OF WISCONSIN, }
Waukesha County. }

In Probate Court.

In the Matter of the Estate of JOSEPH FABACHER, Deceased.

Minutes of Proceedings.

1897, M'ch 27.—Will and petition of A. J. Frame (ex'r) for its probate filed and order made appointing hearing of same at term to be held May 4, 1897; order also made appointing D. S. Tullar, Esq., guardian *ad litem* of minor children and heirs; also affidavit filed of Magdalena Fabacher as to her needs as widow as regards allowance from estate for support.

" May 4.—Hearing for probate of will, proof being filed of due publication of notice of hearing, and appearing the proponent, by Ryan & Merton, his attorneys; appeared Antoinette Thorman, claiming to be a child and only legal heir, by Carney, Clasen & Walsh, her attorneys, and filed objections to probate of alleged will and also to the jurisdiction of the court, claiming this State was not the domicil of deceased. On request of contestant, it being represented that a number of material witnesses reside at New Orleans, La., and one in Kentucky, whose evidence it will be necessary to procure before trial, and after hearing proponent's attorneys, it was ordered that the hearing and trial in said matter of probate of will be, and the same is hereby, continued to the special term of this court to
25 be held third Tuesday of July (being 20th day July, 1897).

1897, June 15.—Interrogatories and cross-interrogatories and affidavit for commission filed.

" " 18.—Commissions issued, with interrogatories and cross-interrogatories attached, to N. Blossom, Esq., of Genoa, Nevada, to examine Antoinette Thorman (*née* Fabacher), and to Charles Fisk,

of Covington, Kentucky, with power to examine Pauline Gross, with interrogatories and cross-interrogatories attached.

" " 28.—Deposition of P-uline Gross (*née* Troye) filed.

" July 5.—Sundry depositions and testimony taken in New Orleans on behalf of Antoinette Thorman filed, and deposition of Mary Ann Schick filed, with commission thereto annexed, and returned with interrogatories.

" " 10.—Depositions of Henry Rice, Bernard McCloskey, Gen. Eugene May, Otto Thorman, Frank Pace, Jos. Schutten, Thomas Nicholson, Fritz Jahncke, Henry Wellman, Jeff. C. Wenck, R. A. Corbin, Christian Schopp, Henry Hallen, Geo. Wegman, Peter Wegman, John Malone, Jos. D. Taylor, Henry D. Hart, Simon Bloch, and H. H. Hodgson filed.

" " 17.—Deposition of William C. Keeley filed.

" " 20.—Hearing pursuant to adjournment for probate of will; appearing proponent, by Ryan & Merton, his att'ys, with Chas. F. Buck, of counsel, and the contestant, by Carney, Clasen & Walsh, her att'ys, with E. Howard McCaleb, of counsel; parties reported themselves ready to proceed with trial; trial proceeded with at 2 o'clock p. m., Margaret Gaynor being, by consent of parties, designated as stenographic reporter of testimony and proceedings, and sworn as such; testimony of E. Merton and C. W. Newbury, the subscribing witnesses to propounded will, taken in proof of will; whereupon the proponent rested. Contestant proceeded with testimony on her part, and sundry documents being introduced and sundry depositions read in evidence on contestant's part, at 6 p. m. the hearing was adjourned to July 21st, 1897, at 9 o'clock a. m. D. S. Tullar, Esq., appeared on said hearing as guardian *ad litem* of minor legatees of deceased and concurred with proponents in support of propounded will.

26

1897, July 21.—Hearing and trial resumed at 9 a. m., and at 6 p. m., adjourned to July 22, at 9 a. m.

" " 22.—Hearing resumed at 9 a. m. Contestants rested in forenoon and proponents opened. Adjourned at 6 p. m. until 9 a. m. tomorrow.

" " 23.—Hearing resumed at 9 a. m. Proponents rested at 4 p. m. and case adjourned to 9 a. m. tomorrow morning for argument.

" " 24.—Hearing resumed at 9 a. m. and arguments heard, and case submitted at 6 p. m. and by the court taken under advisement, and decision reserved until Sept. 1st, 1897.

" Sept. 1.—Matter of probate of will, which on conclusion of trial upon July 24th, 1897, was taken under a-visement by the court and adjourned to this time, taken up to be disposed of and decided—present, the respective parties, proponent and contestant, by their respective attorneys of record, and D. S. Tullar, Esq., as guardian *ad litem* of minor legatees. Decision of the court announced by a written opinion, finding upon all the evidence that the instrument propounded for probate was duly executed; that the deceased at the time of its execution was of sound mind and free from undue influence, and at the time of his death was domiciled in
27 and was an inhabitant of Waukesha Co., Wisconsin, and that said instrument should be admitted to probate. Order made and filed accordingly admitting proposed will to probate and fixing bond of Andrew J. Frame, as executor, at $100,000. Ordered that in case an appeal be taken from such order admitting will to probate the appellant file, with notice of appeal, an undertaking, with sureties to be approved, in the sum of $500.

1897, Sept. 15.—Bond of A. J. Frame, as executor, in $100,000, and with Frank H. Puyney, Richard Weaver, and Henry M. Frame as sureties, approved and filed and letters issued. Order made appointing hearings of claims at next regular March and May terms and fixing limitation of time to present claims at first Tuesday of May, 1898.

" Oct. 13.—Notice filed of appeal to circuit court on part of Antoinette Thorman, contestant, from order made Sept. 1st, 1897, admitting to probate the instrument propounded for probate as the will of Joseph Fabacher, and with said notice was also filed an undertaking in $500, conditional according to statute, duly approved. Order made and filed directing notice of such appeal to be served within ten days on proponent's attorneys and on guardian *ad litem* of minor heirs.

" " 15.—Duplicate of notice of appeal filed in court, with proof of service of such notice thereon endorsed, showing service of such notice on adverse parties pursuant to order made Oct. 15, 1897.

[Endorsed:] Filed in circuit court, Waukesha Co., Wis., Oct. 30, 1897. C. W. Fraser, clerk. Filed July 7th, 1898. Clarence Kellogg, clerk of supreme court, Wis.

28 STATE OF WISCONSIN, } ss:
Waukesha County, }

I, C. W. Fraser, clerk of the circuit court of the county of Waukesha, in the State of Wisconsin, and under the provisions of chapter 185 of the laws of 1876 *ex officio* clerk of the county court of said county, the said county court being a court of record and having a seal, do hereby certify that the annexed and foregoing papers are together a true and correct copy of all papers and of the record and proceedings appealed from in the matter of the estate of Joseph Fabacher, deceased, the order, judgment, and determination of the county court of Waukesha county and State of Wisconsin, bearing date on the 13th day of October, 1897, having been carefully compared by me with the original of such papers, record, and proceeding- and of the whole thereof.

And also annexed hereto is the original of the notice of appeal and undertaking on appeal filed in said matter and proof of service thereof upon the adverse parties according to the order of said county court.

In testimony whereof I have hereunto set my hand and affixed the seal of said county
Seal County Court. court, at the city of Waukesha, in said county and State, this 30th day of October, A. D. 1897.

C. W. FRASER,
Clerk of the County Court Aforesaid.

[Endorsed:] Circuit court, Waukesha county, Wis. In the matter of the estate of Joseph Fabacher, deceased. Return from county court. Filed July 7th, 1898. Clarence Kellogg, clerk of supreme court Wis. Filed in circuit court, Waukesha Co., Oct. 30th, 1897. C. W. Fraser, clerk.

29 Circuit Court, Waukesha County.

In the Matter of the Last Will and Testament of JOSEPH FABACHER, Deceased, on Appeal of Antoinette Thorman, Contestant.

We, the jury, duly empanneled and sworn in this action to try the issues of fact therein submitted to us, on the following questions do find, determine, and answer such questions as follows:

First question. Was the paper-writing presented *fro* proof, allowance, and probate as the last will and testament of Joseph Fabacher, deceased, executed in conformity with the provisions of the statutes of this State relating to wills?

Answer. "Yes"

Second question. Was the said alleged last will and testament of said Joseph Fabacher, deceased, his own voluntary act and deed, or was it the result and product of undue influence?

Answer. "The said alleged last will and testament of said deceased was the deceased's own voluntary act and deed."

Third question. Was the domicil of said Joseph Fabacher at the

time of his death, the 3rd day of March, in the year 1897, at the city of Waukesha, county of Waukesha, State of Wisconsin, or was it at the city of New Orleans, State of Louisiana?

Answer. City of Waukesha, Waukesha Co., State of Wisconsin.

MORRIS A. PLACE, *Foreman.*

Answer. The domicil of said Joseph Fabacher, deceased, at the time of his death, the 3rd day of March, in the year 1897, was at the city of Waukesha, county of Waukesha, State of Wisconsin.

MORRIS A. PLACE, *Foreman.*

[Endorsed:] Filed July 7th, 1898. Clarence Kellogg, clerk of supreme court Wis. Filed in circuit court, Waukesha county, Wis., Jan. 5th, 1898. C. W. Fraser, clerk.

30 STATE OF WISCONSIN:

In Circuit Court for Waukesha County.

At a general term of the circuit court in and for the county of Waukesha, in the State of Wisconsin, begun and held at the court-house, in the city and county of Waukesha and State of Wisconsin, on the 7th day of December, 1897, and on the 5th day of January, A. D. 1898.

Present: The Hon. James J. Dick, circuit judge presiding.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Findings of Fact & Conclusions of Law.

The above-entitled matter being now here at issue in said circuit court upon the appeal by Antoinette Thorman, contestant, from the order and determination of the county court of said county admitting said will to probate, and having now here duly come on for trial and hearing before this court and a jury, and said jury being empanneled at the request of the contestants herein, and the proponent appearing by Messrs. Carney, Clasen and Walsh, her attorneys, and D. S. Tullar, Esq., appearing as guardian *ad litem* for the minor children of said deceased interested in said matter, and the testimony on behalf of the respective parties having been taken in open court, and the court having submitted to the jury its special verdict, wherein the said jury found:

First. That the said proposed will of said Joseph Fabacher, deceased, was duly executed according to the laws of the State of Wisconsin.

Second. That said will was not procured by undue influence or fraud, but was made by the said testator freely and voluntarily and of his own free will; and

31 Third. That the said deceased at the time of his death was a resident and inhabitant of, and that his domicil was at, the city of Waukesha, county of Waukesha and State of Wisconsin.

And after said special verdict had so been entered of record in

this court, and a motion having been duly made by the proponent of said will for judgment of this court admitting the same to probate, and a motion having been made by the contestant that probate thereof be denied, and the court having heard the arguments of respective counsel, and being fully advised in the matter, and independent of said verdict, the court now here makes the following findings of fact and conclusions of law:

1. That the said Joseph Fabacher, deceased, duly made and executed as and for his last will and testament the proposed will offered for probate, and did duly make, execute, and acknowledge the same to be his last will and testament on the 29th day of October, in the year 1896, at the city of Waukesha, county of Waukesha and State of Wisconsin.

2. That said deceased so executed said will of his own free will and accord without any influence being brought to bear upon him whatever, and that he was not under undue influence at the time of the making and subscribing of said will, and that in the execution of said will said testator duly complied with all the requirements of the statutes of the State of Wisconsin.

3. That at the time of the making of said will and at the time of the death of said deceased he, said Joseph Fabacher, was a resident and inhabitant and his domicile was at the city of Waukesha, in the county of Waukesha and State of Wisconsin.

That on the 20th day of June, A. D. 1895, said testator, Joseph Fabacher, in his lifetime duly acquired a domicile and residence in and then and there became an inhabitant of Waukesha, in Waukesha county and State of Wisconsin; that such residence and domicile of said Joseph Fabacher at Waukesha, in Waukesha county,
32 Wisconsin, continued uninterruptedly from said 20th day of June, 1895, down to and including the 3rd day of March, A. D. 1897, the date of his death.

4. That at and prior to the making and execution of said last will and testament of said Joseph Fabacher, deceased, he was of sound mind and memory and competent to make a will.

5. That at and prior to the making of said will so proposed for probate, and on the 30th day of September, A. D. 1895, said testator, Joseph Fabacher, in his lifetime and while so domiciled at Waukesha, Wisconsin, was duly and legally married, at the city of Milwaukee, in Milwaukee county and State of Wisconsin, to one Magdalena Frey, who survives him as his widow; that the issue of said Joseph Fabacher and Magdalena Frey is eleven children, viz:

Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Anthony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick (*née* Fabacher), Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, all of whom were born prior to said marriage of September 30th, 1895, and all of whom were by their said father, Joseph Fabacher, in his lifetime and subsequently to said marriage duly and severally recognized by him as his children and offspring, and that all of said children were at the time of his death and now are heirs at-law of said Joseph Fabacher, deceased.

6. That the contestant herein, Antoinette Thorman, is a child

and heir-at-law of said Joseph Fabacher, deceased, by a former marriage.

7. That in said will so propounded for probate the said testator did not mention his son Lawrence Fabacher as a beneficiary or a legatee, nor did he mention the said daughter, Antoinette Thorman, but that said omission was not by a mistake or inadvertance on the part of said testator; and from the foregoing facts the court now here announces the following conclusions of law:

33 I. That the domicile of said testator, Joseph Fabacher, at the time of his death, on March 3rd, A. D. 1897, was at the city of Waukesha, in the county of Waukesha and State of Wisconsin.

II. That said testator, Joseph Fabacher, left him surviving his widow, Magdalena Fabacher, and twelve children, namely, Antoinette Thorman (*née* Fabacher), Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Anthony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick (*née* Fabacher), Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, his next of kin and heirs-at-law, all of whom are of full age except the children Magdalena Fabacher and Jacob Fabacher, and that all of said children are the legitimate and duly legitimatized children of said Joseph Fabacher, deceased, under and by virtue of the laws of the State of Wisconsin.

III. That the said will of said Joseph Fabacher, deceased, so offered for probate is entitled to probate in the county of Waukesha and State of Wisconsin as the last will and testament of said Joseph Fabacher, deceased, and the same hereby is admitted to probate as the last will and testament of said deceased.

IV. That judgment should be entered by this court admitting to probate the will of said Joseph Fabacher, deceased, and affirming the judgment of the county court admitting the same to probate, and that the records and proceedings herein should be transmitted to the county court for Waukesha county for further proceedings according to law, and that the proponent's costs and *and* attorney's fees and the fees of the guardian *ad litem* in the circuit court should be paid out of the estate of said deceased.

Let judgment be entered in accordance with these findings.

By the court:

JAMES J. DICK,
Circuit Judge.

[Endorsed:] Circuit court, Waukesha county. *In re* last will and testament of Joseph Fabacher, deceased. Findings of fact and conclusions of law. Filed July 7th, 1898. Clarence Kellogg, clerk of supreme court Wis. Filed in circuit court, Waukesha Co., Wis., Jan. 25, 1898. C. W. Fraser, clerk.

34 STATE OF WISCONSIN:

In Circuit Court for Waukesha County.

At a general term of the circuit court in and for the county of Waukesha, in the State of Wisconsin, begun and held at the court-house, in the city and county of Waukesha and State of Wisconsin, on the 7th day of December, 1897, and on the 5th day of January, A. D. 1898.

Present: Hon. James J. Dick, circuit judge, presiding.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Judgment.

The above-entitled matter being at issue and having been duly placed upon the calendar of said court for trial at this term, and having been duly reached in its order, and being now here in said circuit court upon the appeal of Antoinette Thorman, contestant, from the order and determination of the county court of Waukesha county admitting said will to probate, and having now here duly come on for trial and hearing before this court and a jury, the proponent of said will duly appearing by Messrs. Ryan and Merton, his attorneys, and the contestant, Antoinette Thorman, appearing by Messrs. Carney, Clasen and Walsh, her attorneys, D. S. Tullar, Esq., appearing as guardian of the minor children of said deceased interested in said matter, and said matter having been in all things duly tried, and the court having heard all the testimony and having received the verdict of the jury, and the matter having been duly argued before the court by the respective counsel of the parties, and the court having this day duly filed its findings of fact and conclusions of law herein:

Now, therefore, on motion of Messrs. Ryan & Merton, at-
35 torneys for the proponent, and of D. S. Tullar, Esq., guardian *ad litem* for the minors interested, it is hereby—

Ordered, adjudged, and decreed that the said Joseph Fabacher, deceased, duly made and executed as and for his last will and testament the proposed will offered for probate, and did duly make, execute, and publish the same as his last will and testament on the 29th day of October, in the year 1896, at the city of Waukesha, county of Waukesha and State of Wisconsin; that said deceased so executed said will of his own free will and accord, without any influence being brought to bear upon him whatever, and that he was not under undue influence at the time of the making and subscribing of said will, and that in the execution of said will said testator duly complied with all the requirements of the statutes of the State of Wisconsin.

It is further ordered, adjudged, and decreed that at the time of the making of said will and at the time of the death of said deceased he, said Joseph Fabacher, was a resident and inhabitant and his domicile was at the city of Waukesha, in the county of Waukesha and State of Wisconsin; that on the 20th day of June,

A. D. 1895, said testator, Joseph Fabacher, in his lifetime, duly acquired a domicile and residence in and then and there became an inhabitant of Waukesha, in Waukesha county and State of Wisconsin; that said residence and domicile of said Joseph Fabacher, at Waukesha, in Waukesha county, Wisconsin, continued uninterruptedly from said 20th day of June, 1895, down to and including the 3rd day of March, A. D. 1897, the date of his death.

It is further ordered, adjudged, and decreed that at and prior to the making of said will so proposed for probate and on the 30th day of September, A. D. 1895, said testator, Joseph Fabacher, in his lifetime and while so domiciled at Waukesha, Wisconsin, was duly and legally married at the city of Milwaukee, in Milwaukee
36 county and State of Wisconsin, to one Magdalena Frey, who survives him as his widow; that the issue of said Joseph Fabacher and Magdalena Frey is eleven children, namely, Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Antony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick, *née* Fabacher, Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, all of whom were born prior to said marriage of September, 30th, 1895, and all of whom were by their said father, Joseph Fabacher, and subsequently to said marriage duly and severally recognized by him as his children and offspring, and that all of said children were at the time of the death and now are the heirs-at-law of said Joseph Fabacher, deceased; that the contestant herein, Antoinette Thorman, is a child and heir-at-law of said Joseph Fabacher, deceased, by a former marriage; that in said will, so propounded for probate, the said testator did not mention his son Lawrence Fabacher as a beneficiary of legatee, nor did he mention the said daughter, Antoinette Thorman, but that said omission was not by reason of an inadvertance or mistake on the part of said testator.

It is further ordered, adjudged, and decreed that the domicile of said testator, Joseph Fabacher, at the time of his death, on March 3rd, A. D. 1897, was at the city of Waukesha, in the county of Waukesha and State of Wisconsin; that said testator, Joseph Fabacher, left him surviving his widow, Magdalena Fabacher, and twelve children, namely, Antoinette Thorman, *née* Fabacher, Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Antony Fabacher, Louis Fabacher, John J. Fabacher, Barbara Broderick, *née* Fabacher, Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, his next of kin and heirs-at-law, all of whom are of full age, except the children Magdalena Fabacher and Jacob Fabacher, who are minors, and that all of said children are the legitimate and duly legitimatized children of said Joseph Fabacher, deceased, under and by virtue of the laws of the State of Wisconsin.

37 It is further ordered, adjudged, and decreed that the said last will and testament of said Joseph Fabacher, deceased, so offered for probate, is entitled to probate in the county of Waukesha and State of Wisconsin as the last will and testament of said Joseph Fabacher, deceased, and the same is hereby admitted to probate as and for the last will and testament of said deceased.

It is further ordered, adjudged, and decreed that the judgment of the county court of Waukesha county admitting said proposed will to probate as the last will and testament of Joseph Fabacher, deceased, be, and the same hereby is, in all things affirmed, and said last will and testament hereby is admitted to probate in Waukesha county, Wisconsin, as the last will and testament of said Joseph Fabacher, deceased.

It is further ordered, adjudged, and decreed that the record in this case be transmitted to the county court for Waukesha county, Wisconsin, for further proceedings according to law.

And it is further ordered, adjudged, and decreed that the costs of the proponent herein, together with his attorney's fees and the fees of the guardian *ad litem* for said minors in the trial of said action in this court, be paid out of the estate of said Joseph Fabacher, deceased, and that the costs and disbursements be taxed by the clerk in this action, amounting to the sum of two hundred forty-three and 25/100 dollars.

Dated this 25th day of January, 1898.

By the court:

JAMES J. DICK,
Circuit Judge.

[Endorsed:] Circuit court, Waukesha county. *Re* last will and testament of Joseph Fabacher, deceased. Judgment. Filed July 7, 1898. Clarence Kellogg, clerk of supreme court Wis. Filed in circuit court, Waukesha county, Wis., Jan. 27, 1898. C. W. Fraser, clerk.

38 *Notice of Entry of Judgement, R. S.*, 2876.

Circuit Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

To Carney, Clasen & Walsh, attorneys for contestant:

Please take notice that the judgment affirming the *the* judgment of the county court in said matter in all things was entered in the above-entitled action in favor of the proponents and against the contestants in the office of the clerk of the circuit court, county of Waukesha, on the 25th day of January, A. D. 1898.

Yours, etc.,

RYAN & MERTON,
Attorneys for Proponents.

[Endorsed:] Circuit court, Waukesha county. *Re* last will and testament of Joseph Fabacher, deceased. Notice of entry of judgment. Due service of within admitted January 27th, 1898. Carney, Clasen & Walsh, att'ys for contestant. Filed July 7th, 1898. Clarence Kellogg, clerk of supreme court Wis. Filed in circuit court, Waukesha county, Wis., Jan. 27th, 1898. C. W. Fraser, clerk.

STATE OF WISCONSIN, }
Waukesha County. }

In Circuit Court.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Now comes the contestant herein, by Carney, Clasen & Walsh, her attorneys, and hereby filed exceptions in writing to the findings of fact and conclusions of law entered in the above-entitled matter by the circuit court of said county on the 5th day of January, A. D. 1898, as follows, to wit:

1.

The contestant herein except- to the third finding of fact herein to wit, "that at the time of the making of said will and at the time of the death of said deceased he, said Joseph Fabacher, was a resident and inhabitant and his domicile was at the city of Waukesha, in the county of Waukesha and State of Wisconsin; that on the 20th day of June, A. D. 1895, said testator, Joseph Fabacher, in his lifetime duly acquired a domicile and residence in and then and there became an inhabitant of Waukesha, in Waukesha county, Wisconsin; that such residence and domicile of said Joseph Fabacher at Waukesha, in Waukesha county, Wisconsin, continued uninterruptedly from said 20th day of June, 1895, down to and including the 3rd day of March, A. D. 1897, the date of his death," for the reason that said finding is contrary to law and evidence taken on the trial of said cause.

2.

The contestant herein further excepts to the fifth finding of fact herein, to wit, "that at and prior to the making of said will so proposed for probate and on the 30th day of September, A. D. 1895, said testator, Joseph Fabacher, in his lifetime and while so domiciled at Waukesha, Wisconsin, was duly and legally married
40 at the city of Milwaukee, in Milwaukee county and State of Wisconsin, to one Magdalena Frey, who survives him as his widow; that the issue of said Joseph Fabacher and Magdalena Frey is eleven children, viz., Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Anthony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick (*née* Fabacher), Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, all of whom were born prior to said marriage of September 30th, 1895, and all of whom were by their said father, Joseph Fabacher, in his lifetime and subsequently to said marriage duly and severally recognized by him as his children and offspring, and that all of said children were at the time of his death and now are heirs-at-law of said Joseph Fabacher, deceased," for the reason that said finding is contrary to law and to the evidence taken on the trial of said cause.

3.

The contestant herein further excepts to the first conclusion of law herein, to wit, "that the domicil of said testator, Joseph Fabacher, at the time of his death, on March 3rd, 1897, was at the city of Waukesha, in the county of Waukesha and State of Wisconsin," for the reason that the same is based upon erroneous findings and is contrary to law.

4.

The contestant herein further excepts to the second conclusion of law, to wit, "that said testator, Joseph Fabacher, left him surviving his widow, Magdalena Fabacher, and twelve children, viz., Antoinette Thorman (*née* Fabacher), Joseph Fabacher, Albert Fabacher, Lawrence Fabacher, Anthony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick (*née* Fabacher), Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, his next of kin and heirs-at-law, all of whom are of full age, except the children Magdalena Fabacher and Jacob Fabacher, and that all of said children are the legitimate and duly legitimatized
41 children of said Joseph Fabacher, deceased, under and by virtue of the laws of the State of Wisconsin," for the reason that the same is based upon erroneous findings and is contrary to law, with the exception of that part of said conclusion of law which declares Antoinette Thorman, the contestant, a legitimate child and heir-at-law of said deceased.

5.

The contestant herein further excepts to the third conclusion of law, to wit, "that the said will of said Joseph Fabacher, deceased, so offered for probate is entitled to probate in the county of Waukesha and State of Wisconsin as the last will and testament of said Joseph Fabacher, deceased, and the same hereby is admitted to probate as the last will and testament of said deceased," for the reason the said conclusion is based upon erroneous findings and is contrary to law.

6.

The contestant herein further excepts to the fourth conclusion of law, to wit, "that judgment should be entered by this court admitting to probate the will of said Joseph Fabacher, deceased, and affirming the judgment of the county court admitting the same to probate, and that the record and proceedings herein should be transmitted to the county court for Waukesha county for further proceedings according to law, and that the proponent's costs and attorneys' fees and the fees of the guardian *ad litem* in the circuit court should be paid out of the estate of said deceased," for the reason the said conclusion of law is based upon erroneous findings and is contrary to law.

7.

The contestant herein further excepts to the order of said court wherein judgment is ordered to be entered in accordance with the

findings of fact and conclusions of law herein in the following language, to wit, "let judgment be entered in accordance
42 with these findings," because the same is contrary to evidence taken on the trial of said cause and is contrary to law.

Dated this 2nd day of February, A. D. 1898.

CARNEY, CLASEN & WALSH,
Attorneys for Contestant.

[Endorsed:] Circuit court, Waukesha county. In the matter of the probate of the last will and testament of Joseph Fabacher, deceased. Exceptions to findings of fact and conclusions of law. Filed July 7th, 1898. Clarence Kellogg, clerk of supreme court Wis. Filed in circuit court, Waukesha county, Wis., Feb'y 4, 1898. C. W. Fraser, clerk.

43 STATE OF WISCONSIN:

Circuit Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

ANDREW J. FRAME, Proponent; MAGDALENA FABACHER and Jacob Fabacher, Minors, by D. S. Tullar, Their Guardian *ad Litem*, Respondents,

vs.

ANTOINETTE THORMAN, Contestant and Appellant.

To Ryan & Merton, attorneys for proponent; D. S. Tullar, guardian *ad litem* of said Magdalena and Jacob Fabacher, minors, and C. W. Fraser, clerk of the aforesaid court:

Please take notice that the contestant in the above-entitled action, Antoinette Thorman, a child and heir-at-law of said deceased, appeals from the judgment rendered by the above-named court herein entered on the 25th day of January, A. D. 1898, in favor of the proponent and said minors and against the contestant herein, affirming the judgment of the county court of said Waukesha county, admitting to probate in said Waukesha county an instrument propounded by said proponent as and for the last will and testament of said Joseph Fabacher, deceased, and from the whole and every part thereof.

Yours, etc., CARNEY, CLASEN & WALSH,
Attorneys for Contestant.

[Endorsed:] Filed July 7th, 1898. Clarence Kellogg, clerk of supreme court Wis. Filed in circuit court, Waukesha Co., Wis., March 7th, 1898. C. W. Fraser, clerk.

44 STATE OF WISCONSIN,
Department of Insurance.

The National Surety Company, located at New York city, in the State of New York, having furnished to the undersigned commis-

sioner of insurance due proof of its possessing the qualifications required by the laws of the State of Wisconsin relating to suretyship corporations, and having complied with said laws:

Now, therefore, this is to certify that said National Surety Company has qualified and is authorized to transact within this State the business of a suretyship corporation under the statutes of this State until the first day of March, A. D. 1899, unless this certificate be sooner revoked.

Witness my hand and official seal, at Madison, Wiscon-
[SEAL.] sin, this 1st day of March, A. D. 1898.

WILLIAM A. FRICKE,
Commissioner of Insurance.

I, William A. Fricke, commissioner of insurance of the State of Wisconsin, hereby certify that I have compared the foregoing copy with the original certificate of authority, number 14, issued to the National Surety Company and on file in my office, and that the same is a true copy of said original and of the whole thereof.

Witness my hand and official seal, at Madison, Wiscon-
[SEAL.] sin, this 3rd day of March, A. D. 1898.

WILLIAM A. FRICKE,
Commissioner of Insurance,
By E. GILJOHANN, *Dep. Com.*

[Endorsed:] Filed July 7th, 1898. Clarence Kellogg, clerk of supreme court. Filed in circuit court, Waukesha Co., March 7th, 1898. C. W. Fraser, clerk.

45 STATE OF WISCONSIN:

Circuit Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

ANDREW J. FRAME, Proponent; MAGDALENA FABACHER and Jacob Fabacher, Minors, by D. S. Tullar, Their Guardian *ad Litem*, Respondents,

vs.

ANTOINETTE THORMANN, Contestant and Appellant.

Whereas, on the 25th day of January, A. D. 1898, in the circuit court of Waukesha county and State of Wisconsin, Andrew J. Frame, the above-named respondent, recovered a judgment against Antoinette Thormann, the above-named appellant, affirming the judgment of the county court of said Waukesha county, admitting to probate in said Waukesha county an instrument propounded by said respondent as and for the last will and testament of said Joseph Fabacher, deceased—

The above-named appellant, a child and heir-at-law of said deceased, feeling aggrieved thereby, intends to appeal from the said judgment of the circuit court of said Waukesha county and from

the whole and every part of said judgment to the supreme court of the State of Wisconsin:

Now, therefore, the National Surety Company, a corporation under the laws of the State of New York, by its proper officers, do hereby, pursuant to the statute in such case made and provided, undertake that said appellant will pay all costs and damage
46 which may be awarded against her on said appeal not exceeding two hundred and fifty dollars.

Witness the signature and corporate seal of said National Surety Company hereto affixed by order and authority of the board of directors of said company this fifth day of March, A. D. 1898.

NATIONAL SURETY COMPANY,
By WM. BIGELOW, *Res. Vice-Pres't, and*
ROBERT CAMP, *Res. Ass't Sec'y.*

[CORPORATE SEAL.]

In presence of—
HENRY KLOES.
B. W. MUELLER.

STATE OF WISCONSIN, }
County of Milwaukee, } *ss:*

On this fifth day of March, one thousand eight hundred and ninety-eight, before me personally came Wm. Bigelow, known to me to be resident vice-president of the said National Surety Company, a corporation described in and which executed the within and foregoing bond of Antoinette Thormann (*née* Fabacher) as the surety thereon, and who, being by me duly sworn, did depose and say that he resides in the city of Milwaukee, in the State of Wisconsin; that he is the resident vice-president of said company and knows the corporate seal thereof; that the said National Surety Company is duly and legally incorporated under the laws of the State of New York; that said company has complied with the provisions of the act of Congress of August 13th, A. D. 1894; that the seal affixed to the within bond of Antoinette Thormann (*née* Fabacher) is the corporate seal of said company and was thereto affixed by order and authority of the board of directors of said company, and that he signed his name thereto by like order and authority as resident vice-president of said company; that he
47 is acquainted with Robert Camp, — subscribed to said bond is in the genuine handwriting of said Robert Camp and was thereto subscribed by order and authority of said board of directors and in the presence of said deponent, and that the assets of said company not incumbered and liable to execution exceed its claims, debts, and liabilities of every nature whatsoever by more than the sum of five hundred thousand dollars.

The Milwaukee Trust Company is our agent to acknowledge service in the judicial district wherein this bond is given.

WM. BIGELOW.

Subscribed, sworn to, and acknowledged before me this fifth day of March, A. D. 1898.

HENRY KLOES,
Notary Public, Milwaukee County, Wisconsin.

[NOTARIAL SEAL.]

[Endorsed.] O. Circuit court, Waukesha county. In matter of the estate of Joseph Fabacher, deceased. Notice of appeal and undertaking on appeal to supreme court. Admittance of the within notice and undertaking on appeal admitted by copy the 7th day of March, 1898. Ryan and Merton, att'ys for proponent. D. S. Tullar, guardian *ad litem*. C. W. Fraser, clerk. Filed in circuit court, Waukesha Co., March 7th, 1898. C. W. Fraser, clerk. Filed July 7th, 1898. Clarence Kellogg, clerk of supreme court Wis.

48 STATE OF WISCONSIN:

Circuit Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

WAUKESHA COUNTY, *ss*:

I, C. W. Fraser, clerk of the circuit court in and for the county of Waukesha and State of Wisconsin, do hereby certify that the process, pleadings, and other papers hereunto annexed are the originals and all the papers filed in the above-entitled action, and that the same are herewith transmitted to the supreme court of the State of Wisconsin pursuant to notice of appeal hereunto annexed.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at Waukesha, this 6th day of July, A. D. 1898.

Seal Circuit Court.

C. W. FRASER,
Clerk of the Circuit Court, Waukesha County, Wisconsin.

[Endorsed:] State of Wisconsin. Circuit court. Waukesha county. *In re* will of Joseph Fabacher, deceased. Return on appeal to supreme court of the State of Wisconsin. 28. Filed July 7th, 1898. Clarence Kellogg, clerk of supreme court Wis.

49 Be it remembered that at a term of the supreme court of the State of Wisconsin, begun and held at the capitol, in Madison, the seat of government of said State, on the 2nd Tuesday, to wit, on the 10th day of January, A. D. 1899, on the 36th day of the term, to wit, on the 25th day of April, A. D. 1899—present, John B. Cassoday, chief justice; John B. Winslow, R. D. Marshall, Charles V. Bardeen, and Joshua E. Dodge, justices of said court—the following proceedings were had *inter alia*, to wit:

[SEAL.]

ANDREW J. FRAME, Proponent; MAGDALENA Fabacher and Jacob Fabacher, Minors, by D. S. Tullar, Their Guardian *ad Litem*, Respondents,

vs.

ANTOINETTE THORMANN, Contestants, Appellant.

Appeal from Circuit Court, Waukesha County, State of Wisconsin.

This cause came on to be heard on appeal from the judgment of the circuit court of Waukesha county and was argued by counsel; on consideration whereof it is now here ordered and adjudged by this court that the judgment of the circuit court of Waukesha county in this cause be, and the same is hereby, affirmed with costs against the said appellant, taxed at the sum of seventy-eight and $\frac{75}{100}$ dollars ($78.75).

STATE OF WISCONSIN, *Supreme Court*, } ss:

I, Clarence Kellogg, clerk of the supreme court *of the supreme court* of the State of Wisconsin, do hereby certify that I have compared the above and foregoing with the original order and judgment of the court in the above-entitled cause, and that it is a correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Madison, this 25th day of May, A. D. 1899.

CLARENCE KELLOGG,

[SEAL.] *Clerk of the Supreme Court of the State of Wisconsin.*

[Endorsed:] State of Wisconsin, supreme court. Andrew J. Frame, proponent; Magdalena Fabacher *et al.*, respondents, against Antoinette Thormann, contestants and appellants. Remittitur. Filed in circuit court, Waukesha Co., May 27, 1899. J. G. Garth, clerk.

In County Court, Waukesha County, Wisconsin.

In the — Estate and Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Decision.

Joseph Fabacher, whose will is here propounded for probate by A. J. Frame, as being the executor named therein, died about March 3rd, 1897, at the Touro infirmary, in the city of New Orleans, La., leaving personal estate of the value of some $65,000.00, consisting mainly of New Orleans city bonds and real estate, a residence here in Waukesha, of the value of probably $3,000.

While a Bavarian by birth, he came to Louisiana at an early age; became there a fully naturalized citizen of the United States; married and went into business there, and for many years had his domicile, in the strictest sense of the term, and his only place of residence in the city of New Orleans.

For several years last past he had spent the summer season with his wife in Waukesha, returning and spending the winter each year in New Orleans. From the time he began to visit Waukesha he appears to have liked it here; to have liked the climate and to have had better health generally while here than in Louisiana.

52 In the fall of 1893 he purchased a fine location in Waukesha and commenced the erection of a dwelling-house upon it, which was completed in the spring of 1894, and that spring, on the completion of the house after his arrival here from New Orleans, he, with his wife, furnished it and moved into and occupied it as a residence at least every summer thereafter until his death, coming quite early and departing quite late each season, and before his death he was contemplating a speedy return to it in the spring. On October 29th, 1896, about three weeks before his departure last fall for New Orleans, he, in the law office of Ryan & Merton, in Waukesha, executed as his last will the instrument which is here propounded for probate. In it he describes himself as "Joseph Fabacher, of Waukesha, Wisconsin."

The petition for its probate is filed in this court alleging that deceased was at the time of his death an inhabitant of the county of Waukesha, in this State. This allegation is made to show on the face of the petition that *prima facie* the court here has jurisdiction of the probate of said instrument as being the court of the domicile of deceased.

Antoinette Thorman, only child of the deceased by his first wife and who gets nothing under said instrument, comes into court and contests the probate of the alleged will on the usual grounds of undue influence in its procurement and want of testamentary capacity, and, further, on the ground that deceased was not at the time of his death dom-ciled in this State, but that his real home, his domicile, was in New Orleans, La., and for that reason this court has no jurisdiction primarily to take probate of the said will

53 or administer and settle the estate.

The testimony, beyond any controversy whatever, disposes of the first two objections and shows most clearly that the instrument in question was legally executed as our laws provide in respect to wills, and that at the time of its execution the testator was of sound, disposing mind, in full possession of his mental faculties, and acted of his own volition and unbiased by any undue influence. Unquestionably, therefore, the instrument is entitled to probate here if this was in fact the domicile of Joseph Fabacher at the time of his death, and whether his domicile was at that time here in Wisconsin or in New Orleans is the real matter and the only matter on which any controversy arises in this case. If it was in New Orleans, then probate here must be denied, as the only court competent to entertain primary jurisdiction in the probate of a will and distribute the personal estate in the course of administration is the court of the domicile of the deceased.

The terms resident and inhabitant in our statutes defining the jurisdiction of courts of probate in this State, I am, upon all the authorities, forced to construe as embracing only such persons wh o

under the established principles of law, have here their domicil at the time of death.

The question, then, in this case is only one of domicil. Where was the domicile of Joseph Fabacher at the time of his death? This is a very important question to the parties interested in this case, and the circumstances developed on the trial are
54 such as to show that its determination means to the respective parties interested—legatees under the will in question and the contestant—all the estate or nothing, according as it may be decided.

Joseph Fabacher married, in 1853, in Louisiana, one Anna Maria Frey, and by her had the child, Antoinette Thorman, who is the contestant here. Several years after the said marriage it appears that Magdelena Frey, a sister of said Anna Maria Frey, came into the family, and soon illicit relations sprung up between her and Mr. Fabacher, which continued until eight children were born by her of whom Mr. Fabacher is the father. Naturally, a separation followed, and in 1874 said Anna Maria Frey, in the courts of Louisiana, duly procured a judgment of absolute divorce from said Fabacher on the grounds of his adultery with Magdelena. Soon after this Mr. Fabacher and Magdelena, in one of the parishes of Louisiana, went through the ceremony of marriage, and thereafter ever lived as husband and wife, and they had three more children as the fruit of their union.

The divorce obtained by Anna Maria, Mr. Fabacher's first wife, being by reason of an offence committed on his part, the law of Louisiana did not leave him at liberty to remarry, and hence the pretended marriage of himself and Magdelena after such divorce was invalid and gave no greater sanctity to their relations than they had before.

It was probably from a knowledge of such fact that in 1895 the said Joseph Fabacher and Magdelena went through the ceremony of marriage in Milwaukee under the forms admitted as lawful in Wisconsin; but under the laws of Louisiana said Magdelena
55 is not recognizable as the lawful wife of the deceased, and all their eleven children are illegitimate; and, further, under the same law, neither she nor they can inherit as heirs from Joseph Fabacher, or even take under the will as legatees, though the will gives to her and ten of their children by name all his estate.

But notwithstanding the relations of the parties concerned are such as I have described, such is the law prevailing here that, if this was the domicile of the testator at the time of his death, so the estate can be administered and distributed here, all the gifts in the will to the said wife, Magdelena, and to her children may be carried into effect.

Hence the vital importance of this question to the parties interested in these proceedings and the grave responsibility which I have felt in the matter so to dispose of this question honestly and conscientiously as, in my best judgment, after careful examination, the law and the evidence seem to require.

On this question, Where was Mr. Fabacher's domicile? a great

deal of evidence has been laid before the court. The depositions taken in New Orleans and the testimony taken in court here contain together over a thousand folios, and I have read the whole and spent no inconsiderable amount of time in analysing the same, so as to view all the material parts of the evidence under appropriate heads.

Much of the testimony, especially that found in depositions, I must exclude. I ruled out in course of the trial, and must adhere to the ruling, all the obituaries and death and funeral notices
56 composed, made up, and published after Mr. Fabacher's death.

The question of domicil must be determined by facts existing before death and not by what any one may have said or published afterward. I also must rule out all mere opinion evidence, the personal views or opinions of witnesses as to where they regarded the legal residence of Mr. Fabacher to be at any given time.

I must also, under the objections taken, exclude and rule out all those parts of the testimony of the contestant herself as regards any statements or declarations of the deceased made to her as being rendered incompetent by the statute.

I was asked by the guardian *ad litem* of the two minor children and legatees to suppress wholly, as to the minors, all depositions on the part of contestant on the ground that he had never had notice of the taking of the same. As a will affects the whole estate, I could not suppress such depositions as to any one of the legatees, except I suppressed them for all purposes whatever.

And as the executor, in his propounding the will for probate, in a fit sense represents in that proceeding the will and its dispositions as a whole and appears acting in good faith to sustain the will and has been a party in all those depositions, I have decided to deny the motion of the guardian *ad litem* for their suppression. I think it would have been better practice to have given him notice of the taking of such depositions or to have had him join in the stipulation for taking them, and how the courts above may view
57 the omission so to do I will make no conjecture; but I think I may well exclude from view all evidence in the case on either side touching the statements or declarations of the deceased made any time prior to 1895, or at least prior to his return to New Orleans in the fall of 1894, and his subsequent efforts there looking to the disposition of his properties in that city.

Though Mr. Fabacher had previously built his house here and with his wife occupied it during the summer of 1894, I find nothing in any part of the evidence in this case that would indicate at that time any manifest intention of making this his home in the sense of being his domicile, and it was conceded by the proponents in this case upon argument that he did not effect a change of his domicil until the disposition of his properties in New Orleans and his return to Waukesha in the following spring, the spring of 1895.

But after laying aside such parts of the evidence as I have now indicated as immaterial or incompetent, there yet remains a large body of evidence—in fact, the greater part of it—for consideration in the disposition of this case. The evidence which the court regards

as pertinent and material in the case may be placed or classified under these heads.

First. Acts.

Second. Casual declarations made by Mr. Fabacher at sundry times with respect to his home and his intentions regarding the same, but not associated with any particular acts.

Third. Declarations or statements as to the same subject made by him at sundry times, either accompanying his acts or explanatory thereof.

58 The significant acts which are pressed upon the attention of the court on the part of the proponent are:

A.

His having an actual habitation or dwelling-house in Waukesha owned by him and equipped and conveniently furnished with all things needful for and suitable to a permanent home.

B.

His having in the spring of 1895, before his coming to Waukesha, sold and disposed of all his properties in Louisiana, including his previous home there, and then removing to and taking up his actual abode in his home at Waukesha.

C.

His having, after investing the greater part of the proceeds of such sales in New Orleans city bonds, caused said bonds and his other valuable papers to be all brought to Waukesha in 1895 and placed in the bank here and there leaving them to the time of his death.

D.

His having in his will, made last October, deliberately described himself as of Waukesha.

E.

His having in 1895 married in Milwaukee and being described in the marriage certificate as of Waukesha.

F.

His having last fall registered and voted in Waukesha as a citizen of this place.

59 The above are relied on as material facts in the case for the proponent.

Other acts counted on for the contestant are as follows:

A.

Mr. Fabacher's having as late as the spring of 1896, on his way from Chicago to Waukesha, registered himself at the Leland hotel, Chicago, under the head of residence, as of New Orleans, Louisiana.

B.

His having as late as last January, while in New Orleans, been discharged or excused from service as a juror on the ground of being too old.

C.

His having from his return to New Orleans in the fall of 1895 to the time of his death maintained a furnished, though rented, residence in the house there owned by his son and at first furnished by his son, but the furniture in which the deceased afterwards bought, and over which he kept a person in charge while he was here in Waukesha, and to which place he returned when he went to New Orleans, and in which he was living when he died.

D.

His having paid taxes in New Orleans on such furniture.

E.

His not having given in to the assessor here in 1896 any personal property otherwise than his chattels at his home in Waukesha, although he then had $50,000 worth of New Orleans city bonds here, and which were taxable here if this was his home.

F.

His having at all times maintained in the cemetery at New
60 Orleans his family tomb, in which he was buried, and for the care of which he manifested a solicitude, even within a few days before his death.

G.

His maintaining his minor children at schools in Louisiana.

H.

His having maintained at all times a considerable bank account in New Orleans and having his investments there.

There are some other acts of Mr. Fabacher which the contestant pressed on the attention of the court, as that he performed his Easter duties in the South, and there his children took their first communion, and also that in all the acts of sale of his properties in the South he was described as of New Orleans.

These, however, I cannot regard as significant, as in no year does he seem to have come to Waukesha until after the festivities of the Easter season, and at the time of the sale of his properties in New Orleans and the passing of the acts of sale he was, as the court regards it and as even the counsel for proponent conceded, still domiciled in that city, and therefore properly described in those acts as of that place.

Neither can I find any sufficient definite evidence on the subject of heirlooms or family pictures, as to what and how valuable they

were, to consider their place of keeping of material consequence in this case.

As to declarations and expressions made by Joseph Fabacher since 1894 and claimed on the part of the contestant to point towards his domicile being all the while at New Orleans,
61 Matthias Troye, a son of contestant, testifies that in New Orleans last winter the deceased told him he had been home a couple of months. He said: "It was too cold at Waukesha. The doctor told me I wouldn't live to get home." Deceased once said to witness: "Lawrence didn't want him to come home;" never spoke of any other place as home.

S. H. Gross, a son-in-law of contestant, testified that deceased called New Orleans home; never spoke of any other place as home. At the restaurant in *in* New Orleans kept by Lawrence Fabacher, and where the deceased when in that city was accustomed to spend a part of the afternoon or evening each day, it was the habit of deceased when going away to remark, "I am going home" or "I must go home," meaning the place where he lived in the city.

To this way of his speaking when leaving the restaurant also testify Josephine Troye, a daughter of contestant, and Emma Roth.

Lee Scott testifies that in August, 1895, Mr. Fabacher, at Waukesha, remarked to him that he, Fabacher, "was going home when the weather got colder," and that last February he, with Matthias Troye, met him in New Orleans, and Troye said, "Hello, grandpa, when did you get back home?" Fabacher said, "A few weeks ago." Troye then asked him if he was going to Waukesha, and Fabacher replied, "No; he would stay at home this summer in New Orleans."

August Jacobson, of Waukesha, testifies that Mr. Fabacher told him at different times "he was here for his health; climate here agreed with him; he was going to stay at Waukesha as long as he could, and when it got too cold he would go home," meaning New Orleans.

William Parsons, of Waukesha, testifies that last fall Mr.
62 Fabacher talked to him of selling his horses or shipping them back home. He said "when the weather got too cold he was going home."

To the same effect is the testimony of Mr. McCumber and John Wolf, both of Waukesha, except that Mr. Wolf speaks of such talk in 1895.

Anna Poole testifies that the Friday before Mr. Fabacher went South last fall she saw and spoke to him, as he was in a buggy, and he said to her he had "better go back home, as the weather was too cold for him."

James Poole testifies to Mr. Fabacher's having spoken to him last fall of his intention to take some cider home with him to New Orleans.

Patrick Houlihan and Charles Bergeler, of this place, both testify that in the fall of 1895 Joseph Fabacher spoke to them with respect to a certain horse he wanted to sell, remarking "if he didn't sell it for what he wanted he would ship him home."

James Kalk testifies that when he was building the house here

for Mr. Fabacher, and the next year he told him "it was his summer home, his home was in New Orleans." I think the testimony of Mr. Kalk as it stands leaves it doubtful if this was as late as 1895.

J. J. Constantine testifies that either last summer or the summer before Mr. Fabacher spoke to him of having a "nice home in New Orleans and this place being his summer home."

Frank Fuller testifies that in the insurance office here last fall deceased, when wanting a vacancy permit, said "he was going back to his home in New Orleans." He so spoke to witness several —.

63 Charles Taylor testifies that last fall Mr. Fabacher talked with him about leaving his horses with witness for the winter, saying "he didn't feel very well and he was going back to his home in New Orleans." He so spoke to witness several times, but said he would go down there and spend the winter and come back in the spring.

Such, as above summarized, are the declarations of deceased put in evidence on the part of contestant.

On the other hand, we have an equal array of witnesses who testify to several remarks of the deceased made to them, wherein he spoke of Waukesha as his home.

Frank Pace, of New Orleans, testifies that Mr. Fabacher told him some four years ago he was going to make Waukesha his home on account of his health.

Joseph Schluter, of the same city, testifies that deceased told him the day before he was taken sick in New Orleans that "he liked it at Waukesha and that was his home."

Thomas Nicholson swears that Mr. Fabacher told him in the spring of 1895 that he "liked Waukesha as a place of residence, and he intended to winter as well as summer there."

F. Janche testifies he visited Mr. Fabacher at his residence in Waukesha last summer, and it was an elegant place, and Mr. Fabacher said to witness "that was his home for all time to come. He did not intend to go back to New Orleans unless it might be on a visit to see his children once in a while."

Henry Wellman testifies that deceased told him about a year or two ago "he had built a home at Waukesha to make a per-

64 manent home there."

C. Schopp swears Mr. Fabacher told him "he had moved up to Waukesha to stay there."

Henry Heller says he had visited Mr. Fabacher at his place in Waukesha. It was furnished in good style; heater in basement; water pipes to every room and hall; home built for all the year round, and Mr. Fabacher told him "he was going to live there permanently; that he sold every stitch of his property in New Orleans."

Henry D. Hart testifies that Fabacher told him in the year of the World's Fair he had built him a nice home at Waukesha. He was going to move everything there, and he was going to live there.

Simon Block swears that at Waukesha Mr. Fabacher took him about his premises and said to him, "I live here." He said "he

didn't care to come back to New Orleans; this—Waukesha—was his home."

James S. Dent testifies Mr. Fabacher not only on last election told him this was his residence, but also last summer he come to look at witness'ess place and said he intended to live here and he would like to get some of his old neighbors here from the South.

George Harding swears that deceased several times told him that he was going to make his home in Waukesha.

John J. Clarke testifies that in New Orleans he visited Mr. Fabacher at the place where he kept house, and he, while looking for some glasses, remarked, "At my home at Waukesha I have everything fixed up so I know where to find it; but here I live in a rented house, and of course things are not as I would like it." He said he longed to get back to Waukesha. He never felt good except when he was at Waukesha, where his home was."

65 Besides these are those witnesses whose depositions were taken on the part of the contestant, but offered by proponent—Dr. F. Loeber, L. Graham, and F. P. Thompson.

Dr. Loeber testifies it was on his advice Mr. Fabacher went to Waukesha for his health, and that he went there with the intention of remaining there permanently, so he stated to witness.

Mr. Graham says that Mr. Fabacher remarked to him about four weeks before he died, "I'm going away; I am going home." He said, further, he was going to sell the furniture here (at New Orleans), and he wouldn't come back."

F. C. Thompson swears he had several talks with deceased, and from those talks he got the impression that he lived in Wisconsin.

Nine witnesses, Otto Thorman, Frank Pace, Joseph Schatten, F. Jahneke, H. Willman, John Malone, George Wegmann, Peter Wegmann, and Peter Fabacher, all testify that the reasons given to them by the deceased at different times after the spring of 1895 why he might go South or did go South in the winter was the wish of his wife, or to see the children, and nothing else would induce him to go; but for them he would stay here in winter as well as summer.

Under the head of declarations or statements of Mr. Fabacher accompanying or explaining his acts, we have the testimony of Henry Rice, Bernard McClosky, Eugene May, Otto Thorman, Jeff. C. Wenck, R. A. Corbin, John Malone, Joseph D. Taylor, H. H. Hodgson, Peter Fabacher, and Lawrence Fabacher, all of New Orleans, and all giving testimony showing that in the spring

66 of 1895, while the deceased was in New Orleans negotiating for and effecting the sale of his home and other properties in that city, whenever he was interrogated as to his reasons for disposing of his properties there, his one unvarying explanation was that he intended to remove to Waukesha and make that his home.

The several expressions testified to by these different witnesses vary in form, but are to the same effect, as, for instance, to Mr. Rice he said "he had no more use for New Orleans; he was going away for good; going to Waukesha and going to stay there;" to Mr. McCloskey, "he was selling out to go and live at Waukesha:" to

Mr. May, "he had concluded to locate in Waukesha; to sell all his property and go to Waukesha to live;" to Mr. Thompson, that "he wanted to sell his property and go to Waukesha to live;" "he was well there, and had made up his mind to go there and live;" to Mr. Wenck, the notary who passed the acts of sale, "he was going to sell all his possessions in the city in order to remove to Waukesha, where he already had a home, and was going to reside there in future—make that his home permanently;" to Mr. Corbin, "he wanted to sell his home on Prytania street, as he was going to Wisconsin to live and make that his permanent home;" to Mr. Malone, "he was going to sell his property and going to live in Wisconsin for the balance of his life; he wouldn't live in New Orleans any more;" to Mr. Taylor, "he was selling out because he intended to live in Waukesha, as his health was always good there and not good in New Orleans;" to Mr. Hodgson, "he was selling out because he was about to take up his residence in Wisconsin; he expected
67 to dispose of all his property here (in New Orleans) and make a permanent residence in the North;" and to Peter and Lawrence Fabacher kindred statements.

In connection with the making of his will here last October, wherein he describes himself as of Waukesha, Wisconsin, both the subscribing witnesses testify that his attention was at the time of making the will distinctively called to the question as to where was his place of residence, and he claimed it to be at Waukesha; and A. J. Frame testifies, in substance, that Mr. Fabacher about that time asked him to become his executor, and to Mr. Frame's suggestion that he could not go to New Orleans to settle the estate Mr. Fabacher answered that all his possessions, substantially, were here and here was his residence, so his estate would be settled here.

In connection with acts of registering and voting in Waukesha last fall he claimed before the inspectors at the time he registered that this was his residence and had been over a year and he intended this as his permanent home, and he made the same claim in speaking of the subject to Oscar Sperber, Col. Enos, and James S. Dent. He made this claim to Mr. Dent on election day when asking him for a sample ballot, and Mr. Dent distinctly reminded him what was necessary to constitute a voter and told him he did so because "he didn't want to see him get into trouble." To John Malone, in New Orleans last winter, to the suggestion that he should have got back sooner so as to vote, he said, "I don't vote here any more; I am a citizen of Wisconsin."

Of his acts of sale, of his exercise here of the elective
68 franchise last fall, and of his describing himself in his will as of Waukesha, Wisconsin, I find no statements of deceased, testified to by any witness, giving any other or different explanation than indicated in the foregoing analysis.

Such as I have thus indicated is the substantial evidence in this case, the evidence which bears upon the one question in issue, Where was the domicil of the deceased at the time of his death; in what place was his true, fixed, permanent home? A man may have two or more places of residence, two or more homes in a certain

loose sense; he may have a summer home and a winter home, a summer residence and a winter residence, and he may have a residence in one place for business or commercial purposes and in another for recreation or pleasure.

But that sort of residence about which we are concerned here, that sort of residence which answers to the term domicil, which affects civil status and political rights, is peculiarly that which a man from free choice elects as his abiding place for himself and family and where he has actually settled with the intent and purpose of there remaining at least an indefinite time and there having his principal establishment and real home. In this sense all authorities concur that every man must have a domicil; that a man can have but one domicil at any given time, and that such domicil, when once it attaches, cannot be lost, however much one may wander over the earth, until another is actually acquired.

Joseph Fabacher had, as we have already seen, his domicil for many years at New Orleans, and such domicil unquestionably continued to the spring of 1895. Did he then change his domicil?

69 The proponent claims that he did, and the law casts upon those asserting such change the burden of proof. Does the preponderance of the evidence as I have reviewed it sustain the claim of the proponents?

Looking at the evidence in all its phases—looking at it under separate heads and as a whole—I am forced to the conclusion that the acts of Joseph Fabacher in the spring of 1895, his acts in the disposition of all his properties in Louisiana, inclusive of his previous home and its furnishings there, his removal to Waukesha and there taking up his actual abode in a house owned and furnished by him and with the intention at that time—proven, as it seems to me, by an overwhelming array of witnesses—of thenceforth making that emphatically his home, his place of permanent residence, effected an actual change in the domicil of Joseph Fabacher, and from that time to the date of his death his domicil and his citizenship was in Wisconsin.

When Mr. Fabacher came to Waukesha, in the summer of 1895, having disposed of his properties in the South, he had no other home nor abiding place of his own than his residence here. This he owned; this he had built; had equipped it suitably for a winter as well as a summer residence; had newly furnished it; to it he brought his wife, his minor children, his horses and carriages, and he went into it with all those appearances and surroundings which ordinarily indicate actual residence in an intended permanent home. Coupled with all these acts were the repeated and uniform declarations made by Mr. Fabacher to numerous persons, to

70 the persons with whom he transacted the business of his sales in New Orleans, to his friends, who expressed their surprise that he should dispose of his elegant home there, that his intent and purpose in so doing was to move to Waukesha for good—to make Waukesha his permanent home—and there is not a scintilla of evidence showing that at that time, during those transactions in the spring of 1895, and while disposing of his properties

and preparing to come to Waukesha, he ever varied in his statements or gave utterance to any other or different intent.

Under those circumstances and with the intentions Mr. Fabacher thus cherished, so far as those intentions can be inferred from the many and uniform declarations made upon the subject at that time, had Mr. Fabacher died at Waukesha during the summer or fall of 1895 I do not think there could fairly have ever arisen any doubt or question that he was then at least a domiciled citizen of this State. All the grounds of doubt upon that subject must be found, as it seems, in subsequent events. Notwithstanding Mr. Fabacher told many of his friends in 1895 and again in 1896 that he was coming to Waukesha to stay, that he was going to bid goodbye to New Orleans, the fact is that each year, when it came extremely cold weather, he did close his home here and go back to New Orleans for the winter.

But who, upon all the evidence, will say that these returns were not the result of subsequent deliberation and resolve each year as the season of winter approached? There is much in the evidence that would indicate such to be the case, and on each such return to the South, both in the fall of 1895 and last fall, his return,
71 we know, was with the purpose of coming back to his home here in the spring time.

Nine distinct witnesses, having apparently not the most remote interest in the outcome of the case, testify to statements made to them by Mr. Fabacher, either here or at New Orleans, that the only reason which would at any time induce him or did induce him to go to New Orleans for the winter was to please his wife or because she wanted to go down and see the children, and in accord with this is the testimony of Joseph Fabacher that he, unbeknown to his father, in 1895 fitted the house belonging to himself for his father and mother when they might come South, and purchased her tickets for the journey in 1895 and last year.

If Mr. Fabacher, by his acts and intentions combined, effected a change in his domicil in the spring of 1895, so that at that time his domicil came to be fixed at Waukesha, it was still, under the law, equally as permissable for him to visit New Orleans for comfort or pleasure, and even live there for a time each winter in a rented house without forfeiting his domicil or citizenship in Wisconsin, as it had been previously to spend his summers in a home of his own at Waukesha without losing his domicil in Louisiana. If Joseph Fabacher in June, 1895, having parted with his home, with all his visible properties in Louisiana, came to Waukesha with the intent, as he invariably declared he did, of making his permanent residence here, then the moment he, having such intentions, planted his foot upon the threshold of his dwelling here his domicil in the old home ceased and that in the new attached.

Jacobs on Domicil, sec. 134.

72 When the transfer of bodily presence has been accomplished the *factum* is complete and, generally speaking, no further act is necessary, but domicil vests immediately, provided

the requisite animus be present. That time is indeed an element to be regarded in questions of this character may be conceded, but the remark of Lord Stowell in the case of "The Harmony," which counsel for the contestant urged upon the court's attention that "time is the grand ingredient in constituting domicile," with other observations of that learned jurist in the same case, seems very far from having received the sanction of the courts in their discussion of "the general doctrine of domicil. When one domicile is definitely abandoned and a new one selected and actually entered upon length of time is not important; one day will be sufficient provided the requisite animus exists."

White *vs.* Truant, 31 W. Va., 790 (13 Am. St. R., 896), is a case which fitly illustrates this proposition. Michael White with his wife broke up their farm home in W. Va. and moved just across the line to a part of his father's old homestead, in which he still had an interest in Pennsylvania, and, getting there in the evening, he unloaded his goods and put them in the house, setting up one bed and turning the fowls and other live stock loose on the place. It was a damp day and the house was damp and cold, and his wife, not feeling well, on invitation of her husband's brother, who lived just a short distance away, but on the West Virginian side, went with her husband and spent the night there. She had,
however, been within the home they had moved to, and when
73 they went away they locked the door and took the key with
them. The next morning she was taken with typhoid fever and was obliged to remain at her brother-in-law's, and her husband also had to make his abiding place there in consequence of her sickness, going, however, every day to his own house to look after the stock. In about ten days he also sickened at his brother's house and died. Here was a case where the bodily, physical transfer of the person to the intended new domicile had been, as you might say, but for a moment, yet it was held the change of domicil was complete and the estate was to be settled in Pennsylvania.

It is elementary that all that is necessary for the acquisition of a domicil of choice is that the bodily transfer and requisite intent should at some time coexist; that absence from the old place of abode and presence in the new should concur with the intention to abandon the old and presently and permanently reside in the new, and the new vests immediately upon the concurrence of these necessary elements; so, too, the old domicil is instantly divested.

It may be said by contestant that the requisite animus with Joseph Fabacher never in fact existed; that, notwithstanding, when he broke up his New Orleans home in the spring of 1895 and said he did so with the intention of going to Waukesha to make there his permanent home, his subsequent acts, his going to Waukesha and coming back the following winter, belied his words, and should lead us to infer that he never in fact had the intention he said he had.

In view of the often-repeated reasons he afterwards gave
74 for going South again when it came winter, the desire of his
wife, I cannot, just because he did go back, deny that he had

the *bona fide* purpose he said he had when he sold his properties of thereafter making Waukesha his home, and if he then, at the time he made those sales, had in fact such purpose, it would not defeat his contemplated change of domicil that he even at the time might entertain thoughts of returning to New Orleans to visit or for any other temporary purpose. What was required of him was only to abandon that city as his home or his place of abode. Occasional returns or even an intention cherished at the time to return for temporary purposes of business, comfort, or pleasure would not prevent a change of domicil from being effected, keeping in mind especially that his breaking up of home in New Orleans was as complete in all external indications as it could be, and he did not in any way appear to have retained or to have been a party to any efforts to secure a place of habitation for himself in the contingency of any possible return.

Looking at other acts of Joseph Fabacher, other acts than the disposition of his properties in New Orleans and his removal immediately after such disposition had been accomplished to his home in Waukesha, with accompanying declarations then made, and of one uniform character, that he designed to make Waukesha his place of permanent abode, are there any acts that really are of material weight to show a contrary intention, especially when placed in the scale against such acts and circumstances as appear to corroborate the claim that his actual intention was, as he stated it to be, to bid adieu to New Orleans as a place of residence, and thereafter to establish his principal home in Wisconsin? Are there in fact any declarations that, seriously considered, go to rebut the conclusion that he did not effect a change in his domicil? Nearly all the declarations testified to by witnesses on behalf of the contestant are to the effect that the deceased quite often spoke of New Orleans as home, spoke to some people in Waukesha in the fall of the year of going back home, spoke often in New Orleans when leaving his friends after the social recreations of each day of going home, meaning his quarters or residence provided for him by his son in that city. I would not insinuate that this evidence is incompetent or that those declarations or expressions are so immaterial that they should be wholly excluded, but when examined in all the light of surrounding facts and circumstances they do not appeal to my mind as at all strange or unnatural, viewing this as in truth his domicil, made such by his acts in 1895, but that each winter he visited New Orleans, which for many years he had been accustomed to speak of as his home, and when in that city he had fixed quarters for himself and family, which for the time was to him truly a home.

In the case of Franklin's succession, 7 La. An., 395, where the question was whether the domicil of the deceased was at the time of his death in Tennessee or Louisiana, and where it was shown that deceased often spoke of his plantation at Feliciana, in the latter State, as home, the justice who pronounced the opinion of the court in that case, among other things, observed that he did not attach

to this sort of evidence the importance counsel did, for the
76 deceased might well have his domicil in Tennessee and yet call Feliciana plantation his home while in Louisiana.

And in this connection I am equally unable to regard as of any great significance the casual entry made by deceased at the Leland hotel, in Chicago, in the spring of 1896, when he registered himself and family as of New Orleans, La. He had probably so registered himself many times in his life of varied travel and business experience, and it is not at all surprising that, just coming as he then was from the city which he had become habituated to write after his name, he should, on the impulse of the moment, without perhaps even noticing the word residence at the top of the page, and without stopping to reflect whether he was then called upon to write his legal domicil, he should have described himself as he did.

In Smith *et al. vs.* Croom, 7 Fla., 161, a case cited to my attention by contestant's counsel, the court says, as to an entry in a hotel register which was there in evidence, "that when a person has a divided residence it can be but of little weight in determining a question of domicil, since in such a case the person might well have described himself as of either place."

I should also be doing violence to my own sense of reason, at least, were I to attach any special significance to the fact that the deceased was assessed for taxes and such taxes were paid in New Orleans in 1895 and in 1896 upon his household goods in that city, and his omission to give in to the assessor here in 1896 the amount of his personal holdings in New Orleans city bonds. It is
77 not shown but that the tangible personal property of Mr. Fabacher, his household goods, actually in Louisiana were under the laws of that State properly assessable there, or if they were not, it is not made to appear that Mr. Fabacher gave in such assessment or that he personally paid the taxes therein; and, besides, the amount was comparatively insignificant and might for that reason alone have been deemed undeserving of any serious attention.

That his failure to give in to the assessor here in 1895 the $50,000 of bonds he had put away in the vaults of one of our banks, bonds that he might have supposed to be exempt from taxation, as they were so exempt in the place whence he came and where they were issued, should be taken seriously as evidence that he did not consider himself a domiciled citizen of this State I cannot admit, especially when almost daily experience discloses to us that, even with men commonly accounted honorable, the withholding of intangible assets from assessment has come almost to be the rule rather than the exception.

Jacobs, in sec. 443 of his work on domicil, observes that the mere non-payment of taxes at a place of alleged domicil is usually of little weight against it.

Nor can I regard the fact that after his removal to Waukesha the deceased continued to educate his minor children in the South as an important element among the criteria I have to consider. Those children had already begun their studies in private schools of their

religious faith in New Orleans, and it was the most natural thing in the world that the family should desire them there to
78 finish. They would reasonably be the schools of choice of the family and of the children, regardless wholly of the question of change of residence or domicil. In this country, where there is such a multitude of private schools and colleges for the advancement of learning and of such varying character and merit, that a man of Mr. Fabacher's means should choose for his children institutions with which he already had some acquaintance and in which he had come to have a high degree of confidence, could never be permitted to weigh against facts of a far more cogent character on a question of domicil.

The evidence also that last winter the deceased was excused from service as a juror in New Orleans on the ground of his advanced age cannot be held to raise a presumption that shall contradict his more solemn acts and declarations to the effect that this was his domicil, when it is testified to by Lawrence Fabacher, a witness who is in all respects competent for every purpose, that he, for his father, went before the jury commissioners and gave them both reasons why his father should be excused, namely, his non-residence and his age, and as the latter was manifest it was certainly the most reasonable thing that the commissioners should, without further inquiry, set down the latter fact as the ground of excusing the deceased from jury service. With that fact patent before them it is not to be thought of for a moment that they would resolve themselves into a court to try, as this court now tries, the vexed question of domicil. To have done so would, on their part, have been the very extreme of folly.

Jacobs observes on this subject that where one travels back
79 and forth between a new place of abode and his former place of abode, even service on a jury at the latter place does not necessarily imply a retention of his former domicil.

See Jacobs on Domicil, sec. 146, 10 Iowa, 308, there cited.

But here there was no service as a juror performed, but an excuse admitted from such service on the ground of a visible fact, the overage of the deceased.

But much stress is laid by contestant's counsel upon the fact, as is claimed, that the deceased all the while, even after his professed removal to Wisconsin, maintained in New Orleans the bulk of his treasures and fortune, that his investments were all there and his bank account was principally there. This argument would be entitled, probably, to greater weight had the possessions of the deceased consisted mainly of real properties, but the truth is that, aside from the residence in Waukesha, all the possessions of Joseph Fabacher were after May, 1895, personal property, and the same learned text-writer so often quoted on these questions concludes his discussion of this phase of the subject with the remark that "location of one's personal property is a circumstance to which in modern law little weight is attached in determining domicil. In the Roman law it probably was different, but different then were the conditions of

life." Jacobs on Domicil, sec. 420. But if location is one of the criteria to be regarded in this case, what shall we say of the act of Joseph Fabacher having with such extreme care in the summer of 1895 caused his $50,000 worth of bonds against New Orleans, bonds payable in that city, to be all transported in installments to
80 the bank with which he had opened his accounts here and there to be placed with his other valuable papers and kept in security to his death? Why did he not leave them in the bank of his home if New Orleans continued to be his home and with his bankers there?

In Hindman's Appeal, 85 Pa. St., 466, where a party was held to have changed his domicil from West Virginia to Pennsylvania, it is mentioned as one of the significant circumstances that the deceased, after selling his farm in West Virginia and turned all his property into personal estate, on going to his brother's, in Pennsylvania, where he took a room, took with him his horse and a box containing his notes, bonds, and valuable papers. This case which I have just cited was one of a divided residence and in several respects is instructive in the examination of the evidence here. Among other things found in the opinion of the court, is this language: "He," meaning the deceased, "gathered up his property and with it departed and located in another State. The unequivocal act of moving from the one State and taking up his residence in another State is very strong evidence of the establishment of a domicil, and its effect is not destroyed by his expressed and indefinite intention to go back to West Virginia at some future time and buy land. Nothing less than his present intention to retain his domicil there would prevent its transfer to the State into which he moved. When a person sells all his land, gives up his business in the State in which he lived, takes his movable property with him, and establishes his home in another State, such acts *prima*
81 *facie* prove a change of domicil. Vague and uncertain evidence cannot remove the legal presumption thus created."

Do not these remarks apply fittingly to Joseph Fabacher and his acts in 1895?

As pertinant also to this branch of contestant's argument, I may refer to Anderson *vs.* Laneyville, 9 Moore, P. C. C., 325, where it was held that the testator's domicil was in France, notwithstanding his funded property, about $150,000, and large accounts at his bankers were all in England, where he had been domiciled, and his landed estates principally in Ireland, a fact that was urged strongly upon the court, just as it is here, to show that there had in fact never been any change of domicil. I shall have occasion to refer to this case again in considering another phase of the question at issue.

In Haskins *vs.* Mattheis, 8 De Grex, McNaughton & Gorden, 13, it was held "that deceased by purchase of an actual residence and living with slight exceptions upon a villa in Tuscany had lost his English domicil and acquired a new one, notwithstanding he had large investments in British funds, railways shares in England to a large amount, and three bankers in London on whom he drew for sums he needed for his establishment in Tuscany, and even kept

his papers and documents relative to his property in London; yea, and notwithstanding the further facts that the decedent did not mingle in Italian society, took no part in public affairs, carefully preserved his foreign character, and often expressed his attachment to England and his desire to return thither."

Again, with much fervor the court has been urged to consider the family tomb erected in 1889 and maintained by Joseph Fabacher in New Orleans, and which is now the resting place of his
82 remains, as decisive of every other doubt and as demonstrating beyond cavil that that city, the city where he had spent the flower and vigor of his life and in which he had prepared his final home, remained his domicil to his death. There are several cases, indeed, in which weight has been given to considerations of this character, and more especially to well-attested expressions or directions given by the deceased respecting the place of his burial. Yet it appears to me that equally numerous and equally as deserving of credit are the cases where such considerations have been treated as of little or no importance. The beautiful language quoted on the argument here from Justice Rust, in Franklin's Succession, 7 La. An., 375, was called out, we must remember, in a case of various doubtful features, and where the deceased had by his last will expressly ordered his executors to consecrate at least one acre of ground, not in a public cemetery but on his private estate at Fairview, to the erection thereon of an expensive vault in which his own remains and those of his wife and children and other relatives, should they desire, should be buried, and that if he died in any other place they should remove his remains thither; and in all the cases wherein I have found any importance attached by the court to place of burial, or to the wishes expressed by the deceased in that regard, or to the decedent's having built at any place a family tomb, there appears to have been some peculiar circumstance besides which rendered such considerations of more or less weight.

In the present case, though we have evidence that Mr.
83 Fabacher was, even last winter, in his conversation with Mr. Jahnche, in New Orleans, solicitous to have his family tomb in that city fixed up, yet even this evidence is coupled with the statement of the same witness that he, Fabacher, wanted it fixed up before he went away from New Orleans, because he wouldn't come back again—a declaration which only adds force to the conclusion that he regarded Waukesha as his home.

And as to Mr. Fabacher's individual feelings regarding his place of death and burial, we have in this case the testimony of Herman Rice that Fabacher said to him, in speaking of Waukesha, "I have all my interests up there, and I expect to die there;" the testimony of George Wegmann to Mr. Fabacher's statement, "I have built me a home there to live and die in," and the testimony of Peter Wegmann, that only on the day before Mr. Fabacher was taken to the hospital, in a conversation with the witness, he said "that if he ever got back to Waukesha he wouldn't come back again; he didn't care where they buried him, they might just as well bury him up there as here." This, if the testimony be credited, is the very latest

expression of Joseph Fabacher upon this subject to be found in all the evidence.

But as regards considerations arising from the expressed or manifest desires of the deceased as to place of his burial, let me refer to Platt *vs.* Att'y General, L. R., 3 Appeal Cases, 336, & Hood's Estate, 21 Pa. St., 116. In the former case, where the question was whether a deceased person had transferred his domicil from Westbrooke, in Queensland, to New South Wales, the court used this lan-
84 guage: "The expressions of decedent's wish to be buried at Westbrooke does not appear an important circumstance. It must certainly often occur that a person who is permanently residing in one place may have a vault or some place where he may wish to be buried among his ancestors, but that does not affect his domicil."

In Hood's Appeal the courts say as to the deceased, whom they adjudged to have become domiciled in Cuba, "His investments in this country and the interest he had in a mercantile house here can work no change in his place of abode.

His occasional visits on business or pleasure to the land of his birth have as little effect upon the question. His desire to be buried in his native country and the execution of that wish by his executor after his death in France cannot change the state of the case as it existed in his lifetime. A residence is established by acts and intentions while the body and soul are united. When they are separated the question of domicil is at an end. No disposition of the inanimate corpse can effect it. Graves and sepulchers are resting places for the dead, not dwelling-houses for the living."

Thus have I reviewed the acts and declarations of Joseph Fabacher which have been urged upon the court's attention in behalf of the contestant, and I can find in none nor in all of them taken together sufficient force to outweigh or even counterbalance the acts and declarations of the deceased which are to be set down in the opposite scale.

The acts of sale in Louisiana made by him in 1895, his state-
ments then made in explanation of them, all of one invari-
85 able character, and his actual removal to this State upon the consum-ation of those acts of sale and the transfer to the bank here of all his valuables, I have already alluded to as establishing *prima facie* a change of domicil at that time. Following those acts we have the repeated declarations of Mr. Fabacher made at sundry times to different persons that this was his home; that he was here to stay; that he would entertain no thought of going back except his wife might in the winter wish to go down to New Orleans and see the children; and finally we see him last fall claiming and exercising here the highest *per*-ogative of a citizen in voluntarily and without solicitation procuring himself to be registered as such and going afterwards to the polls and voting, and this he did in face of the fact that his attention was distinctly called by all his friends to whom he especially spoke on the subject to what was required by the law of the State to entitle him to that privilege. Oscar Sperber, Col. Enos, and James S. Dent all asked him if he had been a resi-

dent here long enough to vote and he invariably said he had; that he had resided here over a year, and he said this truthfully, if, when he sold his house in Louisiana and came to Waukesha in 1895, he did it with the intention he said he did, of thenceforward making this place his permanent or principal home. If he came here with that resolve he became a citizen of the city in June, 1895, and his temporary sojourn in New Orleans the following winter for either health, comfort, or pleasure did not revoke or suspend
86 his newly acquired citizenship or in a legal sense cut down his residence so as to deprive him of the right to claim the privileges of a voter in November, 1896.

It is vain to urge that his acts and statements in connection with his registering and voting last fall are of little or no consequence or significance. Had he been a young man, acting impulsively or under some importunity or actively enlisted in some political club, or had it been shown that he had also claimed the same privilege in New Orleans after the spring of 1895 as he did here, then indeed it might well be that his acts in this regard would be of no practical account. But there is not shown any importunity or solicitation from any source to induce him to vote; there is not shown any peculiar reason that may have moved him to register and vote if he did not in good faith believe himself to be entitled so to do, by having in the eye of the law been a resident—that is, domiciled in this State for over one year—and especially when his friend, Mr. Dent, distinctly asked him the question, saying as he asked it, "he didn't want to see him get into any trouble." Neither is there shown any attempt on his part to vote elsewhere since the spring of 1895; on the contrary, we have the testimony of one of the witnesses of New Orleans that on hailing Mr. Fabacher in New Orleans shortly after his arrival there last winter he remarked to him, "Fabacher, you ought to have been here to vote;" to which suggestion Fabacher replied, "I don't vote here; I vote now in Wisconsin." Under circumstances like these all the authorities, so far as I am able to gather, hold that such facts of registering and voting, accompanied by the distinctive affirmation of residence, are material and important criteria in getting at the mind of the
87 voter and the intent with which he is living in the locality where he offers his vote.

It is true acts of this nature are not conclusive. I concede that the remark of the learned judge in 6 How., 165, was obiter and is not good law, but I cannot find that our Supreme Court has ever gone back on what it enunciated in substance in the case of Oshkosh *vs.* Kellogg, "that such acts are the highest evidence of a change of domicil in intent as well as fact."

In the famous case of Guier *vs.* O'Daniel, 1 Binn., 349, President Rush says of Guier: "It appears he was present at one election and offered his ticket, which, though not received, is a striking fact to show he considered himself in the light of a citizen."

So the proposition that the exercise of the right of suffrage has always been considered as important evidence where a question of domicil is involved, and the determination of the question turns

upon the intent, some twenty cases are cited in the American and English En. of Law and in Jacobs on Domicil, most of which I have examined and found to bear out the proposition. Among those cases I may refer specially to Carey's Appeal, in 75 Pa. St., 201; Hariston *vs.* Hariston, 27 Miss., 704; Fisk *vs.* Chi., R. Is. and Pa. R'y Co., 53 Barber, 472; Hill *vs.* Spragenburg, 4 La. An., 556; McKowen *vs.* McGuire, 15 La. An., 637; Sanderson *vs.* Ralston, 20 La. An., 312; Succession of Steers, La. case in 18 So. R., 503.

In the case found in 53 Barber the court holds that voting or registering with the intent to vote is an important indication of a design to make the State where the party so offers his vote his home, and the court also observes in the same case that
88 "one's omission to pay taxes must be deemed an unimportant consideration on the question of domicil, even if inconsistant with his duty as a citizen."

And finally there is one more act of Joseph Fabacher which, considering that it was deliberate, as shown by the concurrent testimony of three witnesses, speaks with crushing force to substantiate the conclusion that he had settled in Wisconsin to make this his permanent home. I refer to his description of himself in the instrument here propounded for probate as of Waukesha, Wisconsin. It is true such description of a person as being of a certain locality may often be of little consequence, as courts have frequently observed, when it appears or may be inferred that such description is, perchance, merely the caprice of the notary or scrivener, and no special attention was given it at the time; but in this instance both the subscribing witnesses testify that Mr. Fabacher's attention was called to the fact and the question asked him where was his residence, and more significant still is the testimony of Mr. Frame that when Mr. Fabacher asked him if he might name him as executor of his will Mr. Frame suggested to him that it would be difficult for him to go to New Orleans to administer his estate, and to this suggestion Mr. Fabacher answered that his residence was in Waukesha, substantially all his effects were here, and here his estate would be settled. Acts and statements of this character and made in such connection, and made, too, when the party making them is actually living here with his family, living in a house of his own, well equipped, living here with all those external appear-
89 ances about him that betoken a fixed habitation, and at the same time exercising the highest functions of a citizen of the Commonwealth—such facts cannot be ignored or lightly thrust aside. Say the court of Pa., in Cary's appeal, already cited:

"In that most solemn instrament that a man can set his hand to, his last will and testament, he declares himself as a citizen of that State. It is there he payes taxes and there he votes. A more perfect combination of fact and intention is not conceivable."

There yet remains to be noticed one other argument which was forcibly and eloquently pressed upon the court's attention on the contestant's behalf, and that is that underneath all the acts and declarations of Joseph Fabacher, in his attempt or apparent attempt to effect a change of domicil, there lurked an unholy motive, a pur-

pose to be frowned upon alike by good morals and public law, and to which no court should lend its sanction—an intent, deep down in the bottom of his heart, actual though not expressed, to place himself, if possible, by an ostensible change of residence, beyond the pale of the Louisiana law, by which all his estate was secure to his only legitimate offspring, and throw the ultimate control over his fortune within another jurisdiction, where he might be permitted to bequeath it all to her, who had been his paramour, and to those who in the law had no recognition as children.

Concede that such was the purpose that secretly actuated the deceased in all those matters which we have reviewed; concede that he fully realized and understood his situation and that of his family under the law of Louisiana, and he desired, if possible, to place himself where he would be free from the restraint which that
90 law placed upon the free disposition of his property to those whom he best loved. Does not this fact alone speak volumes in favor of the sincerity, the actuality of his intentions effectually to change his domicil?

On the question of the reality of such intent existing when he came to Waukesha, in 1895, declaring to every one at that time that he designed to make this his permanent residence, the existance of the motive ascribed to him by contestant's counsel is the strongest argument possible for the cause of the proponent's, and it is only with the actual existance of such intent to change his domicil and not with the motive underlying such intention that we have really to do.

I have sought, and sought in vain, for a single authority holding that if an actual, sincere intention to effect a change of domicil concurs with the fact of actual removal to the intended new domicil the existance of any motive whatever will render the attempt abortive and ineffectual.

I cannot find a case which so decides. All authorities agree that in a doubtful case, one where the person whose domicil is in question has filled his life or the latter part of his life with acts and declarations of an inconsistent character, then the existance of any culpable or selfish motive will lead the courts to examine his conduct with greater scrutiny, not because such motive will itself bar a man's freedom to change his place of residence, but to ascertain whether the alleged intention to effect such change was
91 ostensible or real. This is the extent to which the inquiry as to motive is permitted to go.

Say the court in McConnel *vs.* Kelly, 138 Mass., 372: "A man has a right to change his domicil for any reason satisfactory to himself. In determining whether there has been a change from one place to another, the test is whether he has in fact removed his home to the latter place with the intention of making it his residence. If he has, he loses his old domicil and acquires a new one, with all its rights and incidents, and the law does not inquire into the purposes or motives which induced him to make the change. It may be because he prefers the laws of the new place of domicil, or because he can diminish his taxes or other burdens, or desires to bring suit in

a court which would not otherwise have jurisdiction. His status as an inhabitant depends upon the fact that he has made a change of home and not upon the motive or reasons which impelled him to do so."

Judge Story in Briggs *vs.* French, 2 Sumner, 251, says: "Provided a person's removal be real and not merely nominal, and he has truly become a citizen of another State, I have never understood that his motive would defeat his right to sue."

In Kemma *vs.* Brockhaus, 10 Biss., 128—a case, by the way, in the Federal court of this State—Judge Dyer used the following, among other, language:

"If change of residence or citizenship is apparent only, and there has in fact been no change of residence, but a transfer of apparent residence, *animo revertendi*, to give color to jurisdiction in a
92 suit in a State of actual residence, it may not avail, but where there is an actual change of residence and citizenship before suit brought the motive for such change is not material, even if it was a desire to give capacity to sue in a court of the United States."

In Anderson *vs.* Laneuville, 9 Moore Rep. P. C. C., 325, it appeared clearly that the alleged change of domicil of the deceased from England to France was simply to form and maintain an illicit connection, a connection never even sought to be legitimated by any ceremony of marriage whatever, and with a woman whom the deceased by his will made his universal legatee. Notwithstanding the deceased had always spent a portion of each year in England; notwithstanding he retained in England the bulk of his investments; notwithstanding he never in France took the steps prescribed by the code of that country to entitle him of right to establish his domicil therein and might at any time have been thrust out as a foreigner, and notwithstanding the solicitor general of the Crown urged in his argument before the court of privy council that the taking of lodgings or a home even abroad for a kept mistress could never effect a change of domicil, it was decided that such change was effected and that the deceased had lost his English domicil, and his domicil of death was in France.

Lowry *vs.* Bradley, 1 Spears (S. C.), 1. (39 Am. D., 142), is a case applicable to the one at bar in this as well as several other subjects.

In this case deceased had been domiciled in South Carolina, but he disagreed with his wife and they separated. She went to the family of a son-in-law and deceased declared they could live together no longer, broke up his establishment, made sale of his prop-
93 erty but his slaves, and moved with them in the fall to Alabama, declaring he was going to the West to live and never return, and in Alabama he employed his slaves in cutting wood and boarded at a house where he died the next spring. He bequeathed his property to illegitimate children in a larger proportion than the law of South Carolina would permit. But it was none the less decided that Alabama was his domicil at death and his will therefore valid as to such bequests in so far at least as they concerned his personal estate.

The motives, therefore, which actuated Joseph Fabacher may have been exactly those which are ascribed to him on the part of the contestant here, but they do not, in view of the otherwise satisfactory evidence of the reality of his intentions to make this State his home, defeat such intentions; and, again, never would I feel warranted in saying that such motives were improper or censurable. Whatever wrong Joseph Fabacher may have committed towards his first wife, the fact remains that towards his last his relations were up to the time of his death apparently constant, and he sought in his declining days to sanctify them by the rites of matrimony in a State under whose law it might be permitted to him to do so. To all his children by his connection with this woman he seems to have been ever to them a father in very truth, and to treat them as his children and in his will bestow upon them his bounty is not and never has been condemned by those principles of law which obtain in Wisconsin, however it may be forbidden elsewhere.

94 Shall the policy of a foreign code in this respect be held by the courts here in higher regard than those principles which under our system of law place no restraint upon the right of testamentary disposition as to one's own fortune and prescribes no limitation upon his desires to deal lovingly towards those whom only his own errors and no fault of theirs have linked to misfortune? Public policy must, in the tribunals of this State, be interpreted in the light of those principles of jurisprudence which govern here—principles which cannot be set aside "by our courts for the purpose of admitting the operation of any foreign law in derogation thereon or in conflict therewith."

The judgment of the court is that the instrument propounded be admitted to probate, and that letters testamentary thereon be issued to A. J. Frame, as executor, upon his filing a bond, to be approved, in $100,000.

The foregoing is the decision in full rendered by the judge of the county court in matter of will of Joseph Fabacher, Sept. 1, 1897. Formal order admitting will to probate was made and filed this day.

M. S. GRISWOLD,
County Judge.

[Endorsed:] Waukesha county court. In — estate & will of Joseph Fabacher, deceased. Opinion given on admitting will to probate. Sept. 1st, 1897. M. S. Griswold, Co. judge.

95 UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that Blaney T. Walshe was, at the time of signing the annexed document, State tax collector for 6th & 7th dists. in and for the parish of Orleans, having been duly appointed, commissioned, and qualified as such, and that I verily believe the signature

to the attached instrument of writing is his genuine signature, and that said document and attestation is in proper form and by the proper officer.

Given under my signature, authenticated with the impress of the seal of the State of Louisiana, city of Baton Rouge, this twenty-eighth day of April, A. D. 1897.

Seal of Louisiana.

JOHN T. MICHEL,
Secretary of State.

Names of taxable persons.	Names of streets.	No. of lots.	Measurement of all lots.	1. Cash value of lands and lots of ground or claimed by any person or corporation. Whether patented or not, including buildings and improvements of whatever kind.	2. Horses, mares, mules, gelt hogs, cattle, sheep, goats, dogs, and all other live animals.	3. Cars, carriages, and vehicles of all kinds.	4. Merchandise or stock in trade.	5. Money loaned on interest, all credits and all bills receivable for all money loaned or advanced or for goods sold, and all credits of any and every description.	6. Money in possession, on deposit, or in bank.	8. Household goods, furniture exceeding $500 in value, including books and all movable property and chattels.	9. Household ornaments, such as statuary, paintings, and works of art.	10. Jewelry, watches, silverware or plated ware, diamonds, and all other precious stones.	Levee tax of 1 mill.	
Burtheville: Square No. 94—Saratoga, South Franklin, Calhoun, Foucher est.														
Thomas Conway	S. Franklin & Foucher est.	1	30. 5.5 149. 8.5	3,800	Dec.	17, '96	$2,394						3 04	1
"	"	2	" " " "											2
"	"	3	" 10 " "											3
Wid. Thos. O. Rorke	"	4	" " " "											4
"	Calhoun & Franklin	5	29. 1.15 130.	6,500	Dec.	3, '96	1,715						5 20	5
"	" "	6	" " " "											6
Mrs. Septima Morel	" "	7	" " " "	3,500	Dec.	15, '96	2,294						2 80	7
Mrs. Thos. P. Thompson	"	8, 9	" ea. "	2,800	Feb'y.	17, '97	4,637						2 24	8
Lawrence Fabacher	"	10, 11	" "	7,000	Dec.	31, '96	3,469						5 60	9
Mrs. Lewis Graham	"	12	" "											10
"	" & Saratoga	13, 14	" ea. " 10.1	6,000	Mar.	24, '97	5,031						4 80	11
Frank McCoin	" "	15, 16	30. ea. 149.											12
"		17	" " " "											13
"	Saratoga & Foucher est.	18	36. 5. 7 " "	6,000	Dec.	14, '96	2,195						4 80	14
			36.42 149.87											15
Mrs. Lewis Graham	Calhoun & Saratoga	Residence.			Aug.	22, '96	378			300			24	16
Mrs. Thomas P. Thompson	No. 1722 "	"			Sept.	21, '96	716			200			16	17
Joseph Fabacher	1716 "	"			Aug.	24, '96	400			500			40	18
														19
														20
														21
														22
														23
														24
														25

Square Nos. 95—S. Franklin, S. Liberty, Bloomingdale line, Henry Clay Ave.:				294. 5.3											
Martin Frank	H'y Clay ave., Franklin, Bloomingdale.	1	100.	200. 90.	4,500	Dec.	19, '96	2,549						3 60	
"	"	Pt. 2 or P.	"	87. 6											
Mrs. Lewis S. Graham	H'y Clay Ave.	Frt. pt. 2	100.	200. 285.	6,500	Mar.	25, '97	5,041						5 20	
Nicholas C. Cromwell	H'y Clay Ave. & S. Liberty.	" 3	"	279.11.4 87. 6	7,000	Dec.	7, '96	1,843						5 60	
"		" pt. 2	50.	85.											
Mrs. Lewis S. Graham	Henry Clay Ave.	Residence.						Aug.	22, '96	8379	200	100	100	24	
Nicholas Cromwell	Henry Clay Ave. & S. Liberty.	"				N. N. 150	50	Dec.	7, '96	1,843	500		500	88	
					53,600	150	50				1,700	100	600		

NEW ORLEANS, *Apr.* 22, 1897.

I hereby certify that the above is a true copy of the rolls of record in this office of the 15th assessment district, page No. 98, of the city of New Orleans, square- Nos. 94 & 95, Burtheville, for the year 1896.

B. T. WALSHE,
State Tax Collector 6 & 7th District-, Parish of Orleans.

[Endorsed:] "M." M. G., rec'p. Filed in circuit ct., Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

96½ UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that Blaney F. Walshe was at the time of signing the annexed document State tax collector in and for 6th & 7th dists. in and for the parish of Orleans, having been duly appointed, commissioned, and qualified as such, and that I verily believe the signature to the attached instrument of writing is his genuine signature, and that said document and attestation is in proper form and by the proper officer.

Seal of Louisiana. Given under my signature, authenticated with the impress of the seal of the State of Louisiana, city of Baton Rouge, this twenty-eighth day of April, A. D. 1897.

JOHN T. MICHEL,
Secretary of State.

Names of taxable persons.	Names of streets.	No. of lots.	Measurement of all lots.	1. Cash value of lands and lots of ground or claimed by any person or corporation, whether patented or not, including buildings and improvements of whatever kind.	2. Horses, mares, mules, gold-lings, cattle, sheep, goats, hogs, and all other live animals.	3. Cars, carriages, and vehicles of all kinds.	4. Merchandise or stock in trade.	5. Money loaned on interest, all credits and all bills receivable for all money loaned or advanced or for goods sold, and all credits of any and every description.	6. Money in possession, on deposit, or in hand.	8. Household goods, furniture exceeding $500 in value, including books and all movable property and chattels.	9. Household ornaments, such as statuary, paintings, and works of art.	10. Jewelry, watches, silverware or plated ware, diamonds, and all other precious stones.	Levee tax of 1 mill.	
Square No. 377—Prytania, St. Charles, Foucher, Aline:														1
P'd 1. Joseph Fabacher...	Prytania & Aline.....	1-4	31. 3 ea. 139. 10	9,500	Dec.	5, '95	$1,000	.....	.....	.....	.....	.....	7 60	2 3 4
P'd 2. Wid. Wm. T. Benedict	Prytania.....	5-8	62. 6 10 63. 6	7,500	Dec.	18, '95	2,497	.....	.....	.....	.....	.....	6	5 6 7
P'd 3. Miss Elizabeth A. Pleasants.	Foucher & Prytania..	Frt.pts. 5-8	63. 6 62.	7,000	Jan'y	24, '96	4,113	.....	.....	.....	.....	.....	6 08	8 9 10
P'd 4. Geo. D. Fisher.....	" ..	" "	" 4 125.	5,000	Dec.	30, '95	3,417	.....	.....	.....	.....	.....	4	11
P'd 5. Sue, D. C. & H. C. McCann.	" ..	Rear "	2. 8 "	5,500	Feb'y	27, '96	4,677	.....	.....	.....	.....	.....	4 40	12 13
P'd 6. "	.....	9, 10	62. "											14
			125. 9. 3 229.											15 16
P'd 7. Mrs. Rosa L. La Ponte.	St. Charles & Foucher Ave.	11-17	125. 236.11.3	40,000	Dec.	31, '95	3,695	.....	.....	.....	.....	.....	32	17
P'd 8. "	St. Charles & Aline A. Ave.	18-22	" 9. 3 176.74											18 19 20
			125. 184. 6											
P'd 9. Chas. E. Kells, Jr..	Aline.....	23,24, frt. 25	61. 125.	6,500	Dec.	9, '95	1,990	.....	.....	.....	.....	.....	5 20	21
P'd 10. Geo. H. Venaud.....	"	26 "	60. "	8,000	Jan'y	3, '96	3,736	.....	.....	.....	.....	.....	6 40	22
11.	....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	23
12.	....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	24
P'd 13. Joseph Fabacher...	Prytania & Aline.....	Residence.	.....	.....	150	100	Nov. 4	4, '95	$1,386	500	.....	200	76	25
P'd 14. Dr. F. A. Roy.....	1530 "	"	.....	.....	150	100	Aug....	6, '95	327	500	.....	100	48	26
P'd 15. Geo. H. Vennard...	1522 "	"	.....	.....	.....	.....	Aug....	6, '95	328	500	.....	.....	60	27

P'd 16. Mrs. Rosa L. La Ponte.	St. Charles St.....	"						Nov. ...	20, '95	1,657	1,500	1,000	1,500	3 20	28
17. Wm. J. Orthwein...	No. 3529 Prytania.....	"									300	.....	200	40	29 30
Square No. 378—Prytania, St. Charles, Aline, Delachaise:															31 32
P'd 30. Joseph Fabacher...	St. Charles.....	.....	8. 2	312.4	4,500	Dec.	5, '95	$1,900	.....	.....	.....	.....	.....	3 60	33 34
P'd 31. Miss Elizabeth A. Pleasants.	Prytania	.....	31.11. 4 42.10	311. 133.3	5,000	Jan'y	24, '96	4,113	.....	.....	.....	.....	.....	4	35 36 37
P'd 34. Theo. Broderick....	St. Charles.....	Private market.	31.11. 4	132.10	.....	100	50	Nov. ...	4, '95, $1,385	.....	.....	.....	.....	12	38 39
					99,100	400	250	.....	.....	.....	3,300	1,000	2,000	84 81	40 41

NEW ORLEANS, *Apr.* 22, 1897.

I hereby certify that the above is a true copy of the record in this office of the 14th assessment district, page No. 120, of the city of New Orleans, squares Nos. 377 & 378, for the year 1895.

B. T. WALSHE,
State Tax Collector 7th & 6th Dist., Parish of Orleans.

[Endorsed:] "M." M. G., rep. Filed in circuit ct., Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

97½ UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that F. Alphonse Raborin was at the time of signing the annexed document comptroller in and for the city of New Orleans, parish of Orleans, having been duly elected, commissioned, and qualified as such, and that I verily believe the signature to the attached instrument of writing is his genuine signature, and that said document is in proper form and by the proper officer. Elected April 21st, 1896; term of office, four years.

Seal of Louisiana. Given under my signature, authenticated with the impress of the seal of the State of Louisiana, city of Baton Rouge, this twenty-eighth day of April, A. D. 1897.

JOHN T. MICHEL,
Secretary of State.

Names of taxable persons.	Names of streets.	No. of lots.	Measurement of all lots.	1. Cash value of lands and lots of ground or claimed by any person or corporation, whether patented or not, including buildings and improvements of whatever kind.	2. Horses, mares, mules, geldings, cattle, sheep, goats, hogs, and all other live animals.	3. Cars, carriages, and vehicles of all kinds.	4. Merchandise or stock in trade.	5. Money loaned on interest, all credits and all bills receivable for all money loaned or advanced or for goods sold, and all credits of any and every description.	6. Money in possession, on deposit, or in hand.	8. Household goods, furniture exceeding $500 in value, including books and all movable property and chattels.	9. Household ornaments, such as statuary, paintings, and works of art.	10. Jewelry, watches, silverware or plated ware, diamonds, and all other precious stones.	Levee tax of 1 mill.
Square No. 377—Prytania, St. Charles, Foucher, Aline:													
Joseph Fabacher	Prytania & Aline	1–4	31. 3 10 ea. 130. 6	9,500									
Miss Elizabeth A. Pleasants.	Foucher & Prytania.	Frt.pts. 5–8	63. 62.	7,000									
Geo. D. Fisher	" "	" "	" 6 125.	5,000									
Suc. D. C. & H. C. McCann.	" "	Rear "	2. 4 "	5,500									
"		9, 10	62. 8 "	*[400]									
			125. 9. 3 229.										
Mrs. Rosa L. La Ponte	St. Charles & Foucher Ave.	11–17	125. 236.11.3	40,000									
"	St. Charles & Aline A. Ave.	18–22	" 9. 3 176.74										
			125. 184. 6										
Chas. E. Kells, Jr.	Aline	23,24, frt. 25	61. 125.	6,500									
Geo. H. Vennard	"	26 "	60. " 10	8,000									
Wid. Wm. T. Benedict	Prytania	Prts. 5–8	62. 6 63.	7,500									
Joseph Fabacher	Prytania & Aline	Residence.			150	100				500		200	
Dr. F. A. Roy	" 1530 "	"			150	100				500		100	
Geo. H. Vennard	1522 "	"								500			
Mrs. Rosa L. La Ponte	St. Charles St.	"								1,500	1,000	1,500	
W. J. Orthwein	No. 3529 Prytania	"								300		200	

Square No. 378—Prytania, St. Charles, Aline, Delachaise:														
Joseph Fabacher	St. Charles		8. 2	312. 4	4,500									
			31.11. 4	311.										
Miss Elizabeth A. Pleasants.	Prytania		42.10	133. 3	5,000									
			31.11. 4	132.10										
Theo. Broderick	St. Charles	Private market.				*[200]100	50							

*[Figures enclosed in brackets erased in copy.]

I, the undersigned, do hereby certify the above to be a true and correct copy of the assessment-rolls on file in this office.

P. ALPH. ROBINSON, *Comp'r.*

[Endorsed:] "O." M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

98½ UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that F. Alphonse Raborin was at the time of signing the annexed document comptroller in and for the city of New Orleans, parish of Orleans, having been duly elected, commissioned, and qualified as such, and that I verily believe the signature to the attached instrument of writing is his genuine signature, and that said document is in proper form and by the proper officer. Elected April 21, 1896; term of office, four years.

Seal of Louisiana. Given under my signature, authenticated with the impress of the seal of the State of Louisiana, city of Baton Rouge, this twenty-eighth day of April, A. D. 1897.

JOHN T. MICHEL,
Secretary of State.

Names of taxable persons.	Names of streets.	No. of lots.	Measurement of all lots.	1. Cash value of lands and lots of ground owned or claimed by any person or corporation, whether patented or not, etc.	2. Horses, mares, mules, geldings, cattle, sheep, goats, hogs, and all other live animals.	3. Cars, carriages, and vehicles of all kinds.	8. Household goods, furniture exceeding $50 in value, including books and all movable property and chattels.	9. Household ornaments, such as statuary, paintings, and works of art.	10. Jewelry, watches, silverware or plated ware, diamonds, and all other precious stones.
Burtheville: Square No. 94—Saratoga, South	Franklin, Calhoun, Foucher est.:								
5108. Thos. Conway	South Franklin & Foucher est.	1	30. 3.5 by 149. 8.5	3,800					
" "	"	2	" " by " 10.1						
" "	"	3	" 10 " by " "						
5383. Wid. Thos. O'Rorke	"	4	" " by " "						
" "	Calhoun & S. Franklin	5	29. 11.5 by 130.	6,500					
" "	"	6	" " by "						
5384. Mrs. Septimia Morel	"	7	" " by "	3,500					
4962. Mrs. Thomas P. Thompson	"	8, 9	" ea. by "	2,800					
1745. Lawrence Fabacher	"	10, 11	" " by "	7,000					
5314. Mrs. Louis Graham	"	12	" " by "						
" "	" Saratoga	10, 14	" " ea. by "	6,000					
5267. Frank Metcloin	"	15, 16	30. ea. by 149. 10.1						
" "	"	17	" " by " "						
" "	Saratoga & Foucher est.	18	36. 57 by " "	6,000					
			33.42 149.85						
1470. Mrs. Louis Graham	Calhoun & Saratoga	Residence.					300		
1753. Mrs. Thomas P. Thompson	1722 "	"					200		
1471. Joseph Fabacher	1716 "	"					500		

Square No. 95—South Franklin, South Liberty, Bloomingdale line, Henry Clay Ave.:

4613.	Martin Frank	H'y Clay Ave., S. Franklin, Bloomingdale line.		1	*[*[	100.	204. 5.3]	1,500				
"	"		Pt. 2 or P.		*[*[	50.	200. 90.					
	Mrs. Lewis S. Graham.											
5315.	[Alfred C. Green]*	Henry Clay Ave.	Frt. pt.	2	*[	100.	87.6 200.	6,500				
5050.	Nicholas C. Cromwell	S. Liberty, Bloomingdale		3	*[	"	285.					
	"		pt.	2	*[*[	50.	279.11.4 87. 6	7,000	150	50		
1472.	Mrs. Lewis S. Graham	Henry Clay Ave.	Residence.		*[		85.				200	
1829.	Nicholas C. Cromwell	" S. Liberty	"								500	100 300

[* Words and figures enclosed in brackets erased in copy.]

I, the undersigned, do hereby certify the above to be a true and correct copy of the assessment-rolls on file in this office.

P. ALPH. RABORIN, *Comp.*

[Endorsed:] "P." M. G., rep. Filed in circuit court, Waukesha Co., Jan. 5, 1898. C. W. Fraser, clerk.

99½ UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that Henry B. McMurray was at the time of signing the annexed document assessor, 6th district, in and for the parish of Orleans, having been duly appointed, commissioned, and qualified as such, and that I verily believe the signature to the attached instrument of writing is his genuine signature, and that said document is in proper form and by the proper officer.

Seal of Louisiana. Given under my signature, authenticated with the impress of the seal of the State of Louisiana, city of Baton Rouge, this twenty-eighth day of April, A. D. 1897.

JOHN T. MICHEL,
Secretary of State.

14212

Names of taxable persons.	Names of streets.	No. of lots.	Measurement of all lots.	1. Cash value of lands and lots of ground owned or claimed by any person or corporation, whether patented or not, etc.	2. Horses, mares, mules, geldings, cattle, sheep, goats, hogs, and all other live animals.	3. Cars, carriages, and vehicles of all kinds.	8. Household goods, furniture exceeding $500 in value, including books and all movable property and chattels.	9. Household ornaments, such as statuary, paintings, and works of art.	10. Jewelry, watches, silverware or plated ware, diamonds, and all other precious stones.
Burtheville:									
Square No. 94—Saratoga, South	Franklin, Calhoun, Foucher est.:								
Thos. Conway	South Franklin & Foucher est.	1	30. 3.5 by 149. 8.5	3,800					
"	"	2	" " " 10.1						
"	"	3	" 10 " "						
Wid. Thos. O'Rorke	"	4	" " " "						
"	Calhoun & S. Franklin	5	29. 11.5 by 130.	6,500					
"	"	6	" " "						
Mrs. Septimia Morel	"	7	" " "	3,000					
Mrs. Thomas P. Thompson	"	8, 9	" ea. "	2,800					
Lawrence Fabacher	"	10, 11	" " "	7,000					
Mrs. Louis Graham	"	12	" " "						
"	" Saratoga	10, 14	" " ea. "	6,000					
Frank McGloin	"	15, 16	30. ea. 149. 10.1						
"	"	17	" " " "						
"	Saratoga & Foucher est.	18	36. 57 " "	6,000					
			33.42 149.85						
Mrs. Louis Graham	Calhoun & Saratoga	Residence.					300		
Mrs. Thomas P. Thompson	1722 "	"					200		
Joseph Fabacher	1716 "	"					500		

Square No. 95—South Franklin, South Liberty, Bloomingdale line, Henry Clay Ave.:											
Martin Frank	H'y Clay Ave., S. Franklin, Bloomingdale line.	1	100.	5.3 294.	5,000						
"		Pt. 2 or P.	50.	280. 50.							
Alfred C. Green	Henry Clay Ave.	Frt. pt. 2	100.	87. 6 200.	7,000						
Nicholas C. Cromwell	S. Liberty, Bloomingdale	3	"	285.							
"		pt. 2	50.	279.11.4 87.6	7,000						
Mrs. Louis S. Graham	Henry Clay Ave.	Residence.		85.							
Nicholas C. Cromwell	" S. Liberty	"				150	50	500	100	300	

I hereby certify the foregoing to be a true and correct extract from the assessment-rolls for the sixth district, Parish of Orleans.
New Orleans, April 26th, 1897.

H. B. McMURRAY,
Assessor 6th District, Parish of Orleans.

[Endorsed:] "Q." M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

101 STATE OF LOUISIANA, }
Parish of St. Landry. }

Know all men by these presents that we, Joseph Fabacher, as principal, and Thomas H. Lewis, as security, are held and firmly bound unto the governor of the State of Louisiana in the sum of three hundred dollars; for the payment of which we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Dated at Opelousas this 24th day of July, 1874.

Whereas a license has been this day issued by the deputy clerk of the district court in and for the parish of St. Landry to unite in the bonds of matrimony the above-bound Joseph Fabacher and Magdalina Fray:

Now, therefore, the condition of the above obligation is such that if there should exist no legal impedi-ent to this alliance, then the above obligation to be null and void; else to remain in full force and virtue.

(Sgn.) JOSEPH FABACHER.
THOS. H. LEWIS.

Signed in presence of—
ONEZINE A. GINDEY, *D'y Clerk.*

STATE OF LOUISIANA, }
Parish of St. Landry. }

To any one authorized to celebrate marriage of the parish of St. Landry, Greeting:

You are hereby authorized and empowered to unite in the bonds of matrimony, according to law and established rules, Mr. Joseph Fabacher and M. Magdaline Fray, and when you shall have done so that you make duplicate acts of the celebration thereof, signed by yourself and three witnesses, as required by law, one of which acts — shall return within thirty days to the office of the clerk
102 of the district court in and for the parish of St. Landry, together with this license.

Given under my hand and seal of office, as deputy clerk of said court in and for the parish of St. Landry, the 24th day of July, 1874.

ONEZINE A. GINDEY, *D'y Clerk.*

STATE OF LOUISIANA, }
Parish of St. Landry. }

I, Benj. H. Pavz, deputy clerk of the 11th judicial district court in and for the above State and parish, do hereby certify that the within on the reverse hereof is a true & correct copy of the original on file and of record in my office.

Witness my hand and the seal of my office, at Opelousas, La., this 29th day of March, A. D. 1897.

B. H. PAVZ,
D'y Clerk 11th Judicial Dist. of La.

103 STATE OF LOUISIANA, }
Parish of St. Landry. }

Be it remembered that on this 27th day of July, A. D. 1874, by virtue of the hereunto-annexed license from the hon. clerk of the 8th judicial district court of the State of Louisiana in and for the parish of St. Landry, bearing date July 24, 1874, and by virtue of the authority vested in me by law as judge of the district court for said parish, I, John J. Morgan, said judge, did this day unite in the bonds of matrimony, according to law, Joseph Fabacher and Magdalena Fray, both residents of said parish, in presence of Thomas H. Lewis, Archibald P. Williams, and Jacob Pefferkam, lawful witnesses of said parish, whom I have caused to sign this instrument with said named parties in duplicate.

Done and signed at the residence of said Joseph Farbacher, in said parish, on the day and date first above written.

(Original signed) JOSEPH FABACHER.
MAGDALINA FRAY.

(Over.)

Witnesses:
A. P. WILLIAMS.
J. PEFFERKAM.
THOS. H. LEWIS.

JNO. J. MORGAN,
Judge 8th Judicial District La.

STATE OF LOUISIANA, }
Parish of St. Landry. }

I, Benj. H. Pavy, deputy clerk of the 11th judicial district in and for the above-named State and parish, do hereby certify that the with- on the reverse hereof and above is a true and correct copy of the original on file and of record in my office.

Witness my hand and the seal of my office, at Opelousas, La., this 29th day of March, A. D. 1897.

[SEAL.] B. H. PAVY,
D'y Clerk 11th Jud'l Dist. of La.

104 UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that B. H. Pavy was, at the time of signing the annexed document, dep. clerk 11th jud'l dist. court in and for the parish of St. Landry, having been duly appointed by the clerk of said court, commissioned, and qualified as such, and that I verily believe the signature to the attached instrument of writing is his genuine signature, and that said document and attestation is in proper form and by the proper officer.

Given under my signature, authenticated with the impress of

Seal of Louisiana.

the seal of the State of Louisiana, city of Baton Rouge, this twenty-eighth day of April, A. D. 1897.

JOHN T. MICHEL,
Secretary of State.

[Endorsed:] Exhib. "D." M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

105 STATE OF WISCONSIN:

In County Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

By virtue of a commission directed to me and interrogatories accompanying the same, all of which are hereto attached, from the clerk of the county court of Waukesha county, Wisconsin, in the above-entitled matter, now pending in said court, I caused to come before me, in the *twon* of Genoa, Douglas county, State of Nevada, the witness, Mary Ann *Shci*-k, named in the attached commission, a resident citizen o- the county of Douglas and State of Nevada, who, being duly sworn by me to speak the truth, the whole truth, and nothing but the truth, in answer to the attached direct and cross interrogatories propounded to her answered the same as follows, to wit:

Answer to first interrogatory:

Answer. Mary Ann Schick; sixty-five years old, and reside in the *twon* of Genoa, Douglas county, State of Nevada; I have resided here fourteen years.

Answer to second interrogatory:

I knew Joseph Fabacher. He was born July 24th, 1825, in Busenberg, Baiere, Germany, the 6th of May, 1850. I knew him up to the year 1874 in New Orleans.

Answer to third interrogatory:

Mary Ann Fabacher. They were married the 13th day of May, 1850, in St. Mary's church. We lived together until the year 1863.

Answer to 4th interrogatory:

Five children were born—Mary, Franciska, Antonetta, Joseph, and Andrew; only one living now, Antonetta; now living
106 in New Orleans. Mary died in 1852, Franceska died in year 1852, Joseph died in year 1855, Andrew died 1884; all in New Orleans. They left no children.

Answer to the 5th interrogatory:

In New Orleans. I cannot say, but I know he voted in the year 1852. 3rd. I cannot say whether he registered or not. 4th. He was working for wages and had no home of his own —N. Blossom, commissioner.

Answer to the 6th interrogatory:

We were living prior to 1863 in a coffee-house and hotel on Cus-

tom-ho-se street. Antoinette is now living at 924 Desera street, New Orleans.

Answer to the 7th interrogatory:

I do not know how much he was worth in 1874. In the year 1863 he sent me to Germany with two children. He was worth sixty thousand dollars in money and fifteen hundred dollars' worth of furniture. He deposited, in 1863, in the Zabern bank twenty-five thousand dollars in his own name and drew it out in the year 1864 and built houses in Washington street and 3 frame houses on Cotton Press.

Answer to 8th interrogatory:

I was divorced in January, 1874. I have since married Theadore Joseph Schick at Straussburg, Germany. Theadore Joseph Schick is living.

Answer to 9th interrogatory:

I knew Magdalena Frey. She is my own sister. She came to America with Joseph Fabacher, my husband, in the year 1858. She worked a little over one year for me and my husband, Joseph Fabacher, in the hotel. He then took her away, because he had found out that—N. Blossom, commissioner—I knew that they were too intimate with each other. The first place I knew where he took her was to a Mrs. Sandtrucker, on Sand street. Here her first boy, Joseph, was born. My husband continued to care
107 for and support her. My sister robbed me of my husband and my children of thei- father.

Answer to the 10th interrogatory:

In the year 1863. I cannot say where, as he sent me with the children to Germany. They were no- married.

Answer to the 11th interrogatory:

He had six children up to the year 1864. How many since I do not know, as I left New Orleans in 1874. The names of the six are Joseph, Albert, Lawrence, Antone, Lewis, and Peter. They lived together until he died, I am informed.

Answer to the 12th interrogatory:

He was seventy-two years old.

Answer to the 13th interrogatory:

He could read and write English; was sober in his habits. The Catholic church.

Answer to the 14th interrogatory:

Was not hard of hearing when I knew him; he had good hearing.

Answer to the 15th interrogatory:

He could speak and write it; he understood it well. He attended night schools after he was married.—N. Blossom, commissioner.

Answer to the 16th interrogatory:

In New Orleans and prior to the year 1863.

Answer to 17th interrogatory:

When we were living in the hotel my husband, Joseph Fabacher, would come half of the time between the hours of two and three o'clock in the morning, when I would be ready to go to market. I would ask him where he had been all night. He would answer me, "By others." He meant by other women. Many is the time I

came home from market and found the hired girl in his room. He went with other women so much that he contracted a disease and was laid up 4 weeks in bed and was two months on crutches.

108 Two months after Dr. Wezel treated the case he told me that Fabacher was diseased and for me to look out for him. After he got well we had a dispute about his going after other women and becoming diseased. He got so mad that he threw me down the stairs and I was laid up for two weeks. I had to get a woman to wait on me. One morning she was fixing a cup of coffee for me, and Fabacher told her she had better put in poison instead of sugar. After I recovered and came—N. Blossom, commissioner—down into the kitchen I was in favor of sending the hir d girl away that was doing the work in the kitchen, for I knew she was in the family way by Fabacher. Fabacher interfered and said to me, If you put her out, I will put you in the stove and burn you up. A gentleman heard and saw him and called out, "If you put a hand on your wife, I will shoot you, you brute." We never could keep a hired girl of good character. He would torment me until I had to let her go, and those I could keep he would do as he wanted too with them. After all the trouble I had with him he told me many times "that he would swindle me out of everything and make a beggar woman of me." He managed to swindle me out of everything. When he deposited that money in the bank, in 1863, and took it out, in 1864, he gave our daughter Antonette one dollar for a present and afterwards returned to New Orleans. In 1869, when he came back to Germany, he came to see the children and took a walk with them and requested me to clean his coat, which I did. An open letter dropped out of his pocket: I saw it was from Magdalina, my sister. In the letter my sister said she could not live without—N. Blossom, commissioner—him, and the children enquired every day about him.

In the Matter of the Deposition of MARY ANN SCHICK.

First answer to cross-interrogatory:

In the month of January, 1874.

109 Answer to second cross-interrogatory:

In January, 1874, he asked me to take dinner with him and I refused.

Answer to 3rd cross-interrogatory:

No; I do not. I saw a letter he wrote in 1896 enquiring about me.

Answer to 4t*d* cross-interrogatory:

Not of my own knowledge.

Answer to 5th cross-interrogatory:

She is my daughter.

Answer to 6th cross-interrogatory:

I never heard or knew of his losing any property.

MARY ANNA SCHICK.

Subscribed and sworn to before me this 24th day of June, 1897.

N. BLOSSOM,
Commissioner.

STATE OF NEVADA, } ss:
Douglas County, }

N. Blossom, clerk of the district court of the first judicial district of the State of Nevada in and for Douglas county, the commissioner named in the within and foregoing commission, does hereby certify and return to the within-named court that after the giving of the said commission to me I took the deposition of the witness within named and the one described in the caption and the certificate accompanying said deposition and signed by her and herewith returned; that the said witness before giving her testimony was duly and publicly sworn by me to testify the truth, the whole truth, and nothing but the truth before giving her testimony in answer to each of the interrogatories and cross-interrogatories put to her, and that the said deposition was taken at my office, in the
110 town of Genoa, in the county of Douglas, State of Nevada, on the 23rd day of June, A. D. 1897, and concluded on the 24th day of June, 1897.

[SEAL.] N. BLOSSOM,
Commissioner.

[Endorsed:] Ex. E. Filed in circuit court, Waukesha county, Wis., Jan. 5th, 1898. C. W. Fraser, clerk. Filed in probate court this 5th day of July, 1897. —— ——, Co. judge.

111 STATE OF WISCONSIN:

In County Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

To Messrs. Ryan and Merton, attorneys for proponent in the above-entitled matter.

SIRS: Please take notice that the foregoing are direct interrogatories to be propounded to Mary Ann Schick, of the city of Genoa, in Douglas county, in the State of Nevada, under a commission to be issued out of and under the seal of the county court of Waukesha county in the above-entitled matter, which is now pending in said court, and an issue of fact having been joined therein; that you are herewith served with a copy of such interrogatories; that after the expiration of ten days from the date of such service upon you a commission will issue in said action, according to law, to take the deposition of said witness upon such interrogatories and such cross-interrogatories as may be filed herein, and that the cause or reason fro which said deposition is to be taken is that the said Mary Ann Schick is a necessary and material witness for said contestant on the trial of the above-entitled matter, and that said witness is not a

resident of the State of Wisconsin, but resides and now is in the said city of Genoa, county of Douglas, State of Nevada.

CARNEY, CLASEN & WALSH,
Attorneys for Antoinette Thormann
(Nee Fabacher), Contestant.

Dated at the city of Waukesha, Wis, this 12th day of May, A. D. 1897.

112 STATE OF WISCONSIN:

In County Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Interrogatories to be administered to Mary Ann Schick, residing in the city of Genoa, Douglas county, State of Nevada, witness to be produced, sworn, and examined on the part of the contestant in the above-entitled matter under a commission to be issued out of and under the seal of the county court of Waukesha county and directed to N. Blossom, clerk of Douglas county court, State of Nevada, and *ex officio* clerk of the district court of the first district of the State of Nevada, and to such other person as may be named commissioner on the part of the proponent in the above-entitled matter.

First interrogatory. What is your name, age, and residence? Where do you reside and how long have you been living at your present residence?

Second interrogatory. Did you know the late Joseph Fabacher; when and where was he born; when did you first become acquainted with him; how long did you know him and where?

Third interrogatory. What was the name of Joseph Fabacher's wife; when and where were they married; how long did they live together?

Fourth interrogatory. How many children were born from said marriage; what are their names; are they now living or dead; if living, where do they reside; if dead, when did they or either of them die and where? If they or either of them are dead, state whether they left any children.

Fifth interrogatory. Where was Joseph Fabacher naturalized; when, if ever, did he become a citizen of the United States of America and where; do you know whether he ever registered
113 to vote; if so, where? Where was the home and domicil of said Joseph Fabacher when you became acquainted with him; how long did he continue to reside there; where was his residence?

Sixth interrogatory. Where do his children, family, friends, and acquaintances reside?

Seventh interrogatory. About how much was Joseph Fabacher worth in January, 1874? And state in what his property consisted;

state what were the respective values of his personal and real estate and where were they situated.

Eighth interrogatory. If in answer to the previous interrogatories you say you were married to Joseph Fabacher, at Saint Mary's church, in the city of New Orleans, State of Louisiana, on the 13th day of May, 1850, state whether said marriage was ever dissolved by divorce or otherwise. If yes, have you since contracted another marriage? With whom and where? What is your husband's name? Is he now living or dead; if dead, when did he die?

Ninth interrogatory. Did you know Magdalena Frey? What relation is she to you? State everything you know about her. State everything you know about her relations with said Joseph Fabacher, deceased.

Tenth interrogatory. When did Joseph Fabacher commence living with Magdalena Frey? Where? Were they married at the time?

Eleventh interrogatory. How many children did he have by her? What were their names? How long did they live together? State everything you know in relation thereto.

Twelfth interrogatory. About how old was Joseph Fabacher at the time of his death, on the 3rd day of March, 1897?

Thirteenth interrogatory. Was he a man of education? Was he sober or otherwise in his habits? Of what church was he a member?

Fourteenth interrogatory. Were any of his faculties impaired? Was he hard of hearing or was his hearing acute?

Fifteenth interrogatory. Did he speak and write the English
114 language with fluency or otherwise? What do you know about his capacity to read English and understand the same when written or when read to him?

Sixteenth interrogatory. When and where did Joseph Fabacher make the money and accumulate the property which he possessed at the time you knew him?

Seventeenth interrogatory. State any other fact or facts within your knowledge about Joseph Fabacher, deceased, as though specially interrogated in relation thereto.

[Endorsed:] State of Wisconsin, Waukesha county court. In the matter of the probate of the last will and testament of Joseph Fabacher, deceased. Notice of commission, caption and interrogatories. Service of a copy of within notice for commission and direct interrogatories thereto attached admitted this 12th day of June, A. D. 1897. Ryan & Merton, att'ys for proponent in above-entitled matter. Filed in county court, Waukesha Co., Wis., June 15, 1897. C. W. Fraser, clerk.

115 STATE OF WISCONSIN:

In County Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased, *Deceased.*

To Messrs. Carney, Clasen & Walsh, attorneys for Antoinette Thormann, *née* Fabacher, contestant:

Please take notice that the following cross-interrogatories are submitted by the proponent in the above-entitled matter:

In the Matter of the Deposition of MARY ANN SCHICK.

First cross-interrogatory. When did you last see Joseph Fabacher, now deceased?

Second cross-interrogatory. When did you last converse with or talk to Joseph Fabacher, deceased?

Third cross-interrogatory. Do you know anything of your own personal knowledge about Joseph Fabacher, deceased, since the year 1874?

Fourth cross-interrogatory. Do you know anything of your own personal knowledge about the actions or life of Magdeline Fry, now Magdaline Fabacher, since the year 1874?

Fifth cross-interrogatory. What relation is the contestant in this matter, Antoinette Thormann, to you?

Sixth cross-interrogatory. Do you not know that prior to the holding of the Cotton centennial, at the city of New Orleans, in year 1884, that Joseph Fabacher had lost substantially all of the property that he had accumulated prior to that time?

RYAN & MERTON,
Attorneys for Proponent.

[Endorsed:] Cross-interrogatories. Due service of within cross-interrogatories admitted this 14 day of June, A. D. 1897. Carney, Clasen & Walsh, att'ys for contestant. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk. Filed in county court, Waukesha Co., Wis., June 15, 1897. C. W. Fraser, clerk.

116 THE STATE OF WISCONSIN, } ss:
Waukesha County, }

County Court.

The State of Wisconsin to N. Blossom, clerk of Douglas county court of the city of Genoa, county of Douglas, and State of Nevada:

Whereas it appears unto our judge of our county court for Waukesha county, State of Wisconsin, that Mary Ann Schick, of the city of Genoa, county of Douglas, and State of Nevada, is a material witness in a certain cause now pending in our said county court, *between* entitled In the matter of the probate of the last will and testament of Joseph Fabacher, deceased, plaintiff, and ——

——, defendant, and that the personal attendance of said witness cannot be procured at the trial of said cause;

And whereas we, in confidence of your prudence and fidelity, have appointed you, and by these presents do appoint you, N. Blossom, commissioner to examine the said witness:

Now, therefore, we do authorize and empower you, at a time and place to be fixed by you, diligently to examine the said witness on the interrogatories and cross-interrogatories attached to this commission, on her corporal oath first taken before you, and cause the said examination of such witness to be reduced to writing and signed by such witness and by yourself, and then return the same, annexed to the said commission, unto our county court aforesaid with all convenient speed, enclosed under the seal of you, the said commissioner.

Witness the Honorable M. S. Griswold, judge of the county court of Waukesha county, State of Wisconsin, at the city of Waukesha, county of Waukesha, and State of Wisconsin, this 18th day of June, A. D. 1897.

C. W. FRASER, *Clerk.*

—— ——, *Attorney.*

STATE OF WISCONSIN, } ss:
County Court, Waukesha County, }

I, C. W. Fraser, clerk of said court, do hereby certify that the interrogatories and cross-interrogatories attached and referred to in the within commission are the originals, as the same were filed in my office in the action herein entitled.

Witness my hand and the seal of the county court of Waukesha county, at the city of Waukesha, county of Waukesha, and State of Wisconsin, this 18th day of June, A. D. 1897.

Seal County Court.

C. W. FRASER, *Clerk.*

Rules of the County Court, Waukesha County, Wisconsin, Relating to the Mode of Executing Commissions.

SECTION 4115, R. S. 1878. The commissioner named in the direct interrogatories shall fix the time and place for executing the commission, and give the other commissioner, if any, one day's notice thereof, when he resides in the same place, and when not one day's notice in addition for every thirty miles of distance between the place of his residence and the place fixed for executing the commission. If the notice be by mail, double time shall be allowed; but notice may be waived in writing or by appearance at the execution of the commission. If there be two commissioners, the place for executing the commission shall be fixed in the county where they reside, unless they agree upon another. The commissioner named in the direct interrogatories shall have charge of and return the depositions.

RULE XVIII, SEC. 4. On the receipt of the commission by the commissioner named in the direct interrogatories, he shall fix a time and place for executing it, and notify the other commissioner, if any there be, under the provisions of section 4115 of the Revised Statutes, unless such notice be waived in writing or by his appearance at the execution of the commission. At the time and place so fixed the commissioner or commissioners shall proceed to execute such commission in accordance with said section 4115, and sections 4, 5 and 6 of this rule, copies whereof shall be transmitted with the commission for their instruction. If either of the commissioners shall not attend at the time and place so fixed, the other may proceed to execute the same with like effect as if both were present; but he must certify in his return that the commissioner so absent had due notice of the time and place of executing the same, and that he failed to attend pursuant thereto.

SEC. 5. The commissioner or commissioners shall proceed to execute the same as follows: The commissioners, or one of them, shall publicly administer an oath to each witness named in the commission, that the answers which he shall make to each of the interrogatories propounded to him shall be the truth, the whole truth, and nothing but the truth. Each interrogatory, direct and cross, shall be propounded to him, and his answer thereto be correctly reduced to writing, and with any exhibit thereto be annexed to and returned with the commission. Each witness shall subscribe his name at the end of his answers to the interrogatories, and the commissioner or commissioners shall subscribe his or their names at the foot of each page of the testimony. If any exhibit is produced and proved or referred to in the answer of any witness, it shall be marked as an exhibit by some convenient designation, either by letter or number, by the commissioners, or one of them, and be referred to in the testimony of the witness, and shall be annexed to and returned with the deposition. If the paper be a record or other document not in the control of the party or the commissioner, it shall be sufficient to annex a copy, stated by the witness in his answers to be a true copy thereof. The commissioner or commissioners shall certify in their return that each witness was duly sworn or affirmed before giving his evidence, and shall also state the time when the testimony was taken. The return of the commissioner or commissioners shall be endorsed on the commission.

SEC. 6. When the answers to all the interrogatories and exhibits thereto, if any, shall have been so signed and annexed to the commission upon which the return shall be indorsed, the proper commissioner shall enclose the same in a suitable envelope, which shall be properly sealed, and direct the same to the clerk of the court from which the commission issued, at his place of office, with the title of the action endorsed thereon, and the package shall be immediately transmitted to him by mail or express.

[Endorsed:] County court, Waukesha county. In the matter of the probate of the last will and testament of Joseph Fabacher, deceased. Commission. Ex. E, M. G., rep. Filed in probate this 5th

day of July, 1897. M.S. Griswold, Co. judge. Filed in circuit court in Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

117 (Law stamps, $13.00.)

Petition to Evict Tenant. Filed September 5th, 1891.

Civil District Court, Division "C."

JOSEPH FABACHER
vs.
LAWRENCE FABACHER. } No. 33742.

To the honorable judges of the civil district court for the parish of Orleans:

The petition of Joseph Fabacher, a resident of the city of New Orleans, respectfully shows that on the 28th day of June, 1888, petitioner entered into a written lease for a period of three years with Lawrence Fabacher of the premises No. 23 Royal and 102 & 104 Custom-house street-, as will appear from a certified copy of the written lease aforesaid executed before John Bendernagel, not. pub., June 28th, 1888, hereunto annexed as part of this petition.

That said lease has expired by limitation and has not been renewed in any manner, and on the 21st day of July, '91, petitioner gave the said Fabacher written notice to remove from and vacate said premises on the 1st day of September, '91, and said Lawrence Fabacher has failed and refused so to do.

Wherefore petitioner prays that Lawrence Fabacher may be cited, and after due proceedings in the manner and form pointed out by the statute for such cases made and provided that they may be judgment in the petitioner's favor and against the said Lawrence Fabacher evicting him from the premises No. 23 Royal and 102 & 104 Custom-house street-, in this city, without further delay, and petitioner prays for costs and for all general and equitable relief.

(Signed) HENRY P. DART, *Attorney.*

118 *Sale of Interest in Restaurant & Lease, Jos. Fabacher to Lawrence Fabacher. Filed September 5th*, 1891.

Civil District Court, Division "C."

JOSEPH FABACHER
vs.
LAWRENCE FABACHER. } No. 33742.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans. }

Be it known that on this twenty-eighth day of June in the year one thousand eight hundred and eighty-eight, before me, John Bendernagel, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came

and appeared Joseph Fabacher of this city, who declared that for the consideration and on the terms and conditions hereinafter set forth and expressed he does by these presents grant bargain sell convey transfer assign set over and deliver unto Lawrence Fabacher also of this city here also present *excepting* and purchasing for himself his h*ea*rs and assigns and acknowledging due delivery & possession thereof all his right title share and interest being two undivided thirds $\frac{2}{3}$ (the said Lawrence Fabacher being already the owner of the other one divided third having paid for the same in full) in to and of all and singular the stock in trade fixtures
119 furniture counters shelving and all other appurtenances of the restaurant dining-room kitchen store-room and lodging-rooms in the premises known as 102, 104 and 106 Custom-house street and No. 23 Royal street in this city also two horses and two wagons (the gas fixtures and ranges in said premises are not included) together with the good will of said Joseph Fabacher in and to the business conducted in said premises and all the receipts thereof from the twelfth day of June inst. and all the bill- receivable and accounts due the firm of Joseph Fabacher and Son, said Lawrence Fabacher assuming and binding himself to pay all the outstanding liabilities of said firm which is hereby declared to have been dissolved from and on said twelfth day of June inst.

To have and to hold said stock in trade & unto said Lawrence Fabacher, his heirs and assigns forever.

This sale is made and accepted for and in consideration of the price and sum of ten thousand ($10,000) dollars of which the sum of four thousand dollars had been paid in cash by said Lawrence Fabacher to said vendor receipt whereof is hereby acknowledged and due and full acquittance and discharge is granted therefore and for the balance of said price said purchaser has made and furnished his four certain promis-ory notes drawn by him to the order of said vendor dated June 12th, 1888 and made payable each for the sum of fifteen hundred ($1,500) dollars respect*fully* in six twelve eighteen and twenty-four months after date with interest at the rate of seven per cent. per annum from date until paid it being understood that said purchaser shall have the right to take up and pay the whole or any one of said notes with accrued interest the date of payment at any time prior to the date of maturity, which notes after having been paraphed "*Ne varietur*" by the undersigned notary for identification herewith were delivered to said vendor who hereby acknowledges receipt thereof.

And for and in consideration of a monthly rental of four
120 hundred dollars per month to be paid by said La-rence Fabacher to said Joseph Fabacher at the end of each and every month which shall run and elapse after the first day of June inst., which rental is represented by thirty-six rent notes drawn by said Lawrence Fabacher dated this day & made payable to said Joseph Fabacher each for the sum of four hundred dollars monthly in accordance herewith which notes are "not negotiable" and are paraphed "*Ne varietur*" by the undersi*g*ned for identification herewith, the said Joseph Fabacher does hereby let lease and hire

unto said Lawrence Fabacher the said premises No. 23 Royal street and Nos. 102 and 104 Custom-house street, wherein said business is conducted as well as the other portions of said buildings for a period of three years from and after said first day of June inst. with the privilege granted to said Lawrence Fabacher of renewing for an additional period of the same rental and on the same terms and conditions provided that said Lawrence Fabacher shall give to said lessor sixty days' notice prior to the expiration of the lease herein granted of his intention to renew for an additional period said notice to be given in writing.

It being understood and agreed that during the continuance of this lease of renewal thereof said Lawrence Fabacher shall keep the floor- in said premises in repair and relay them where necessary and keep the inside of said premises in good order and repair at his own expense, and said lessor shall keep the roofs and outside of said buildings in good order and repair and paint the same and all openings windows and doors outside when necessary and said lessee shall keep the privies clean and comply with all city ordinances at his own cost and expense and at the expiration of this lease he shall deliver up said premises leased to said lessor his heirs or assigns or legal representatives in the same order and condition as received the usual wear and tear excepted together with all keys and fastenings.

121 And it is understood and agreed that if said lessee shall fail or refuse to pay said rental as the same shall fall due, said lessor shall have the right after ten days' default in payment to enter upon and take possession of said leased premises as well as to claim the balance due up to date or he may at his option sue for the balance of the rent notes held by him in case of suit for possession or for the recovery of said balance said purchase price or rent notes said lessee shall and he hereby binds himself to pay the fees of the attorney-at-law employed to recover possession or the amounts of said notes as well as all legal costs and charges. And to secure the full and punctual payment of said notes given in part payment of said stock, &c., said Joseph Fabacher hereby retains vendors' liens and privilege on and against said stock furniture fixtures &c. to insure the use and benefit of the owner of said notes.

It is understood and agreed that said Lawrence Fabacher shall have the right to let the upper portion of said leased premises and that in the event of his death all the rights and benefits including the lease herein granted and enjoyed by him shall be held and enjoyed by his heirs and legal representatives subject to the stipulations and agreements herein set forth and expressed. In case said leased premises shall be damaged by fire so as to prevent the carrying on of the restaurant or lodging-house business at any time during three years the said rental shall cease during the time said premises shall remain untenantable to be renewed and continued and placed in a tenantable condition it being provided that said lessor shall immediately proceed to put the same in such condition and said lessor shall then continue to pay the rental as herein pro-

vided the notes covering the period of time, said premises
122 shall remain untenantable a charge shall be returned to said lessee.

It is understood that no transfer of this lease shall be made by said lessee without the consent of said lessor having been given in writing and that no sale or transfer of the stock fixtures &c. herein conveyed shall be made by him until the above-mentioned notes given in part payment thereof shall have been fully paid in principal and interest.

Thus done and passed in my notarial office at New Orleans aforesaid in presence of Jefferson C. Wenck and William Renaudin competent witnesses residing in this city who hereunto subscribe their names with said parties and me, notary on the day and date set forth in the caption thereof.

(Original signed) JOSEPH FABACHER.
LAWRENCE FABACHER.
J. BENDERNAGEL, *Not. Pub.*

JEFF. C. WENCK.
W. RENAUDIN.

I certify the foregoing and within to be a true and correct copy of the original acts on file and of record in my office.

New Orleans, July 5th, 1888.

[SEAL.] (Signed) J. BENDERNAGEL, *Not. Pub.*

123 No. 33742. Civil district court. Filed Sept. 5th, 1891. (Signed) Louis Burthe, d'y clerk. Filed in circuit court, Waukesha county, Wis., Jan. 5, 1898. C. W. Fraser, clerk. June 28, 1888. Sale of interest in restaurant and lease, Jos. Fabacher to Lawrence Fabacher. Reg'd, C. O. Book 128, fo. 374. J. Bendernagel, not. pub. No. 158 Common street.

124 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

JOSEPH FABACHER
versus
LAWRENCE FABACHER. } No. 33742.

Mr. Lawrence Fabacher, New Orleans:

You are hereby summoned to comply with the demand contained in the petition of which copy accompanies this citation or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service thereof.

Witness the Honorable F. A. Monroe, N. H. Rightor, T. C. W. Ellis, Fred D. King, A. Voorhies, judges of the said court, this 5th day of September, in the year of our Lord 1891.

(Signed) LOUIS BURTHE,
Deputy Clerk.

Court-house, opposite Jackson square.

125 No. 33742. Civil district court for the parish of Orleans. Joseph Fabacher *vs.* Lawrence Fabacher. Henry P. Dart, attorney. Copy of petition and citation inside to be served on Lawrence Fabacher, New Orleans. Received Saturday, 5th, 1891, and on the 7th day of September, 1891, I served a copy of the within citation and accompanying petition personally on Lawrence Fabacher, defendant herein. Sh'ff's fees, $1.50. Returned same day. (Signed) J. L. Rock, d'y sh'ff. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. —— ——, clerk.

126 *Answer of Lawrence Fabacher.*

Filed September 10th, 1891.

Civil District Court, Division "C."

JOSEPH FABACHER
vs.
LAWRENCE FABACHER. } No. 33742.

Now into court, through undersigned counsel, comes the defendant, who, for answer to the claim or demand of plaintiff, says:

That he generally and specially denies all the allegations of plaintiff, except as hereinafter specially admitted.

Respondent, further answering, says:

That — the act dated 28th June, 1888, passed before John Bendernagel, late a notary public of this parish, he contracted with Mr. Joseph Fabacher, a resident of this parish, a lease of the premises No. 23 Royal street and Nos. 102 and 104 Custom-house street, in this city; that under said contract he took possession of said leased premises and faithfully carried out all the conditions and stipulations therein contained.

That under said contract of lease respondent had the privilege of renewal of the lease for three years more of the leased premises upon the same terms and conditions, conditioned upon his giving sixty days' notice in writing of his intentions to renew said lease to the lessor, all as will fully appear by a duly certified and authenticated copy of said lease annexed to plaintiff's petition on file herein.

Your respondent further sayd that, availing himself of the privilege of renewal of said leased premises as contained in said
129 lease, he did, on the 27th day of March, 1891, give notice, in writing, to said Joseph Fabacher of his intention to renew said lease, as will be fully shown by said notice, annexed hereto as part hereof, marked "N:"

128 Fabacher's restaurant and hotel, No. 23 Royal and 102 & 104 Custom-house St.

NEW ORLEANS, LA., *March 26th*, 1891.

Mr. Joseph Fabacher.

DEAR SIR: Please take notice that I will avail myself of the privilege (as per contract June 28th, 1888) to continue lease for

three years for the houses No. 23 Royal street and No. 102 & 104 Custom-house street.

At your convenience will go — the notary and sign lease.

Yours truly,

(Signed) LAWRENCE FABACHER.

Now, your respondent further says:

That on or about the 21st day of June, 1891, the said Joseph Fabacher, in flagrant violation of petitioner'- legal and equitable rights under said contract of lease and the privilege of renewal therein contained, sent him notice to vacate said leased premises, as appears by said notice, hereto annexed as part hereof, marked "V."

127 Henry P. Dart, attorney-at-law, No. 49 Camp street.

NEW ORLEANS, *July 21st*, '91.

Mr. Lawrence Fabacher, # 23 Royal street — 102 & 104 Custom-house street, city.

DEAR SIR: I am instructed to notify and you are hereby notified to remove — and vacate the above-described premises rented by you from me, Mr. J. Fabacher, under a lease which expired on the 1st June last; and you are further notified to remove, as aforesaid, on or before the 1st day — September, 1891.

I am instructed to ask a reply to this within the next three days.

Yours truly,

(Signed) HENRY P. DART,
Att'y for J. Fabacher.

Approved:

(Signed) JOSEPH FABACHER.

That the act of the said Joseph Fabacher in attempting to eject him from the leased premises is illegal and constitutes a trespass upon his rights of possession of the leased premises, and if permitted and allowed would cause and work upon him ir-epa-ble injury and inflict a pecuniary loss upon him *par* exceeding twenty-five thousand dollars, and would dispossess him from his rights from said leased premises and *in* an unauthorized interference of his right to the free and undisturbed possession under his contract and his rights thereunder.

Your respondent says that he is a young man, recently engaged in business upon his — account, — by his own energy, skill, knowledge, ability, and natural aptitude he has succeed*ing* in establish- a profitable business as a restaura*nte*-r and keeper of a hotel and lodging-house.

That he has paid the said Joseph Fabacher for the good will, privilege, etc., of operating his business at the leased premises the sum of ten thousand dollars, and has fitted and repaired said leased premises at a cost exceeding five thousand dollars.

130 That should he be ejected from the possession of the said leased premises his business would be broken up, his credit

destroyed to a considerable extent, his business prospects in life blasted—commercial ruin, in short.

Your respondent further says:

That and since the time he gave notice in writing to his said lessor, Joseph Fabacher, of his intention to renew said lease the said Joseph Fabacher acknowledged respondent's right to a renewal of said lease under his contract of lease, and by his acts and subsequent conduct fortifies that acknowledgment and assured respondent at various times that the lease would be prepaired for his signature; that he told respondent to call at the office of John Bendernagel, late notary in this city, to sign said lease and rent notes, but that when respondent called at the office of Mr. Bendernagel as directed no actual lease was prepared for his signature.

That he has frequently called upon Mr. Joseph Fabacher to go with him and have the lease executed, and Mr. Joseph Fabacher stated that he was all right and that the matter would be attended to.

That relying upon the notice of his intention to renew said lease, the acts, conduct, and assurance of Mr. Joseph Fabacher and his legal right under the contracts of lease, respondent authorized Mr. John Bendernagle to prepare a contract of lease and rent notes for his signature.

That said act and rent notes were prepared and the lease and rent notes signed by the respondent and the contract of lease tendered to the lessor for his signature, who refused to sign same or accept the rent notes.

Respondent further shows that the reason that Mr. Joseph Fabacher would not sign the renewal of lease was that he
131 wanted inserted in said contract of renewal of lease certain arbitrary, oppressive, and unwarranted clauses and stipulations which he had no color or claim of right to exact, the effect of which would be to completely paralyze and extinguish in part, if not in whole, respondent's future business, and to which insertion respondent would not consent.

Respondent further shows that he is in possession of said leased premises under his contract of lease and his right to renewal thereof, and that he has or caused to be tendered to his lessor, Joseph Fabacher, an act of lease as prepared by John Bendernagel, notary, signed by respondent, being a lease of the premises No. 23 Royal street and 102 and 104 Custom-house street, in this city, at the rate of four hundred dollars per month for the term — three years from the first day of June, 1891, together with thirty-six rent notes signed by respondent to the order of said Joseph Fabacher, each for four hundred dollars, payable monthly, as set forth in said lease, and also the sum of four hundred dollars in cash, being the rent for the month of June, 1891, of said premises, represented by the first of said notes, and the demanding of said Joseph Fabacher that he sign the said lease, in conformity or right of renewal accorded to petitioner in the lease of said premises passed before John Bendernagle, notary, on the 28th day of June, 1888, and accept said notes and cash.

That Joseph Fabacher refused to sign said lease and accept said rent notes and cash, as aforesaid, and he was legally put in default, as will be more fully shown by a certified — of an act of default executed before said John Bendernagel, late a notary of this city, annexed hereto as part hereof, marked "D."

That respondent's right to a renewal of said lease upon his complying with the conditions thereof should be recognized and
132 maintained by this honorable court and be decreed legal and binding.

That Mr. Joseph Fabacher should be ordered to sign said contract of renewal of lease as tendered to him and accept the rent notes and cash tendered.

Wherefore respondent prays that plaintiff's suit be dismissed.

That respondent's right to renewal of lease of the said premises, upon complying with the terms and conditions thereof, be recognized and maintained by this honorable court, and the plaintiff, Joseph Fabacher, be ordered to sign said contract of renewal of lease as tendered him and accept the rent notes and cash tendered, and that he be qui-ted in the free and undisturbed possession of the leased premises.

And for such further order in the premises as the nature of the case requires and the law directs.

And for general and equitable relief.

(Signed) DROLLA & AUGUSTIN, *Att'ys.*

Affidavit.

Lawrence Fabacher, a resident of this parish, being duly sworn, deposes and says that the facts and allegations set forth in the above answer are true and correct.

And entitle him to retain possession of said leased premises.

(Signed) LAWRENCE FABACHER.

Sworn to and subscribed before me this 10th day of September, A. D. 1891.

[SEAL.] (Signed) G. LE GARDIEUR, JR.,
Notary Public.

133 *Act of Default.*

Filed September 10th, 1891.

Civil District Court, Division "C."

JOSEPH FABACHER
vs.
LAWRENCE FABACHER. } No. 33742.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Be it known that on this twentieth day of July, in the year one thousand eight hundred and ninety-one, I, John Bendernagel, a notary public in & for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of witnesses

hereinafter named and undersigned, did, at the request of Lawrence Fabacher, of this city, present and tender to Joseph Fabacher, also of this city, an act of lease as prepared by the undersigned notary, signed by said Lawrence Fabacher, the release of the premises No. 23 Royal street and 102 and 104 Custom-house street, in this city, at the rate of four hundred dollars — month, for the term of three years from the first day of June, 1891. The whole is fully set forth in said lease, which is hereunto annexed and made part hereof, together — thirty-six rent notes signed by said Lawrence Fabacher and made payable to the order of Joseph Fabacher, each for four hundred dollars, payable monthly, as set forth in said lease, and also the sum of four hundred dollars in cash, being rent for the month of June of said premises, represented by the first of said note-, and did demand of said Joseph Fabacher that he sign said lease

134 in conformity with the privilege of right of renewal accorded to said Lawrence Fabacher in the lease of said premises, passed before the undersigned notary on the 28th of June, 1888, to which special reference is hereby made, and accept said notes and cash; and said Joseph Fabacher then declared unto me, notary, that he refused to sign said lease and accept said rent notes and cash for the reason that the sixty days' written — required to be given by the said Lawrence Fabacher to him, as set forth in said act, of which herein tendered is a renewal, was never given to him by said Lawrence Fabacher, and for the reason that said Lawrence Fabacher had notified that unless the renewal of lease stipulated that said Lawrence Fabacher should have a further right or privilege of renewal for an additional period of three years he would close the leased premises the year before the expiration of said renewal so as to run down the place, and that he notified said Lawrence Fabacher unless he would agree and bind himself not to do so and not to move his furniture and fixtures from said premises until the expiration of the period of three years he would not renew, and that said Lawrence Fabacher refused to bind himself to this effect.

Whereupon, at the request of the said Lawrence Fabacher, I, said notary, did protest and do hereby publicly and solemnly protest against the act of Joseph Fabacher in refusing to sign said lease and accept said rent notes and cash, as aforesaid.

Thus done and passed, in my notarial office, at New Orleans aforesaid, in presence of Jefferson C. Wenck and William A. Renaudin, competent witnesses, residing in this city, who hereunto subscribe their names, together with me, said notary, on the day and date set forth in the cap ion hereof.

(Original signed) J. BENDERNAGEL, *Not. Pub.*
JEFF. C. WENCK.
WM. RENAUDIN.

135 I certify the foregoing — a true and correct copy of the original act of default and lease on file and of record in my office.

New Orleans, July 22nd, 1891.
9 words interlined approved.
[SEAL.] (Signed) J. BENDERNAGEL, *Not. Pub.*

136 STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Lease.

Joseph Fabacher
to
Lawrence Fabacher. } No. —.

Be it known that on this — day of ——, in the year one thousand eight hundred and ninety-one, before me, John Bendernagel, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Joseph Fabacher, of this city, who declared that for the consideration and on the terms and conditions hereinafter set forth and expressed, he does by these presents let, lease and hire for and during the term, time and space of three years commencing on and running from the first day of June, 1891, and terminating on the thirty-first day of May, 1894, unto Lawrence Fabacher also of this city, and here also present and accepting for said period the premises known as 23 Royal street, and Nos. 102 and 104 Custom-house street, in this city, now being occupied by said lessee and used by him for the purpose of conducting a restaurant business.

This lease is made and accepted for and in consideration of a monthly rental of four hundred dollars, per month to be paid by said lessee to said lessor at the end of each and every month, which shall run or relapse from and after the first day of July, 1891, which rental is represented by thirty-six rent notes drawn by said
137 Lawrence Fabacher, dated this day, and made payable to said Joseph Fabacher each for the sum of four hundred dollars, monthly in accordance herewith, which notes are "not negotiable" and after having been paraphed "*Ne varietur*" by the undersigned notary for identification herewith were delivered to said Joseph Fabacher as he hereby acknowledges.

It being understood and agreed that during the continuation of this lease said lessee shall keep the floors in said premises in *in* repair and relay them when necessary and keep the inside of said premises in good order and repair at his own expense and said lessor shall keep the roofs and outside of said buildings in good order and repair, and paint the same and all openings, windows and doors outside when necessary and said lessee shall keep the privies clean and comply with all city ordinances at his own costs and expense, and at the expiration of this lease he shall deliver up said premises leases to said lessor his heirs, assigns, or legal representatives in the same order and condition as received the usual wear and tear excepted, together with all keys and fastenings.

And it is understood and agreed that if said lessee shall fail or refuse to pay said rental as the same shall fall due, said lessor shall have the right after ten day[illegible] default in payment to enter upon and take possession of said leased premises as well as to claim the balance due up to date, or he may at his option sue for the balance of

the rent notes held by him and in case of suit for possession, or for the recovery of said rent notes, said lessee shall pay and he hereby binds himself to pay the fees of the attorney-at-law employed to recover possession, or the amount of said notes, as well as all legal costs and charges.

It is understood and agreed that said lessee shall have the right to let the upper portion of said leased premises, and in the
138 event of his death all the rights and benefits including the lease herein granted and enjoyed by him shall be held and enjoyed by his heirs and legal representatives, subject to the stipulations and agreements herein set forth.

In case said leased premises shall be damaged by fire so as to prevent the carrying on of the restaurant or lodging-house business at any time during this lease, the said rental shall cease during the time said premises shall remain untenantable to — renewed and continued when placed in a tenantable condition it being provided that said lessor shall immediately proceed — the same in such condition and said lessee shall then continue to pay the rental as herein provided the notes covering the period of time said premises shall remain untenantable shall be returned to said lessee. It is understood and agreed that no transfer of this lease shall be made by said lessee without the consent of said lessor having first been given in writing.

Thus done and passed in my notarial office at New Orleans aforesaid in presence of Jefferson C. Wenck and William Renaudin competent witnesses, residing in this city, who hereunto subscribe their names together with said parties and me notary on the day and date set forth in the caption hereof.

(Original signed) LAWRENCE FABACHER.

JEFF. C. WENCK.
WM. RENAUDIN.

139 *Motion to Fix.*

Filed September 28th, 1891.

JOSEPH FABACHER
vs.
LAWRENCE FABACHER. } No. 33742. Div. "C." Civil Dist. Ct.

On motion of Henry P. Dart, attorney for the plaintiff herein, it is ordered that this case be set down for trial for Tuesday, the 6th day of October, 1891, at 11 a. m., and the defendant notified thereof.

(Signed) F. D. K. [SEAL.]

140 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division "C."

JOSEPH FABACHER
versus
LAWRENCE FABACHER. } No. 33742.

To Messrs. Drolla and Augustin, attorney- and counsellor- at law, New Orleans.

SIR-: Please to take notice that the — in this case has been fixed for trial on the sixth day of October, 1891.

New Orleans, October 28th, 1891.

[SEAL.] (Signed) JOE GARIDEL,
Deputy Clerk.

141 No. 33742. Civil district court for the parish of Orleans. Joseph Fabacher *vs.* Lawrence Fabacher. Notice of trial. Filed October 1st, 1891. (Signed) Jas. D. Rankin, D. clerk. Serve on Messrs. Drolla & Augustin. Received Monday, September 28th, 1891, and on the 29th day *on* September, 1891, I served a copy of the within notice of trial on Drolla & Augustin herein by personal service on J. N. Augustin, a member of said firm. Returned same day. (Signed) J. Pickens, d'y sh'ff. Sh'ff fees, 50c.

142 UNITED STATES OF AMERICA, }
State of Louisiana. }

[SEAL.]

Civil District Court for the Parish of Orleans.

I, Paul O. Guerin, clerk of the civil district court for the parish of Orleans, do hereby certify that the foregoing documents are true and correct copies of the originals thereof on file and of record in the clerk's office of the civil district court for the parish of Orleans, in the suit entitled Joseph Fabacher *vs.* Lawrence Fabacher, under the number 33742 of the docket of this court.

[SEAL.]
($1 law stamps.)

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this tenth day of May, in the year of our Lord one thousand eight hundred and ninety-seven, and in the one hundred and twenty-first year of the Independence of the United States of America.

PAUL O. GUERIN, *Clerk.*

I, F. A. Monroe, presiding judge of the civil district court for the parish of Orleans, do hereby certify that Paul O. Guerin is the clerk of said court; that the same is a court of record, having probate jurisdiction, and that the signature, Paul O. Guerin, clerk, to the foregoing certificate is in the proper handwriting of him, the said Paul O. Guerin, clerk; to his official act as such full faith and credit

are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on the 10th day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

F. A. MONROE, *Judge.*

143 I, Paul O. Guerin, clerk of the civil district court for the parish of Orleans, do hereby certify that F. A. Monroe, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, presiding judge of the civil district court for the parish of Orleans, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said court this tenth day of May, 1897.

[SEAL.] PAUL O. GUERIN, *Clerk.*

[Endorsed:] No. 33742. Civil district court, parish of Orleans. Joseph Fabacher *vs.* Lawrence Fabacher. "F," M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

144 UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that Jeremiah M. Gleason is and was, on 22nd April, 1897, supervisor of the registration in and for the parish of Orleans, having been duly appointed, commissioned, and qualified as such, and that full faith and credit are due his official acts in said capacity.

Appointed August, 1896.
Commissioned August, 1896.
Oath filed August 15th, 1896.
Term of office, four years.

Seal of Louisiana.

Given under my signature, authenticated with the impress of the seal of the State of Louisiana, city of Baton Rouge, this twenty-eighth day of April, A. D. 1897.

JOHN T. MICHEL,
Secretary of State.

145 *Parish of Orleans, Third Precinct, Twelfth Ward.*

Date of registry.	No. of certificate.	Name.	Age.	Color.	Nativity.
1891, Sept. 1	359	Jos. Fabacher.....	66	W.	G'y.

Residence.	Name of householder.	Occupation.	Precinct.	Ward.
475 Prytania.....	Self.....	None.....	3	12

Time of residence in—			Year born.
State.	Parish.	Ward.	
47 years.....	47 yrs.....	6 yrs.	1825.

Oath and Signature.

I do solemnly swear, or affirm, that by the time of holding the next election in this parish I will be at least twenty-one years of age. I was born, naturalized, or declared my intentions to become a citizen of the United States (as the case may be) and am subject to the jurisdiction thereof, and by the time for holding of the next election I will have been a resident of this State for at least one year and of this parish for at least six months, and of the ward which I now claim to be registered for at least thirty days, and I am not disfranchised for any causes mentioned in article 187 of the constitution of this State.

JOSEPH FABACHER.

I hereby certify that the above is a true and correct extract from the original precinct register in this office.

In witness whereof I have signed these presents and affixed thereto the seal of the office, at New Orleans, on this 22nd day of April, 1897.

JERE M. GLEASON,
Supervisor of Registration for the Parish of Orleans.

[Endorsed:] Ex. "G," M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

146

No.	Names of voters.	No. of registration.	Remarks.
145	Chas. H. Williams	1276	
146	Pat'k Henderson	45	
147	Wm. Doherty	1480	
148	H. W. Mason	739	
149	J. H. Wiegel	663	
150	Rob't Smith	983	By affidavit.
151	B. N. Forman, Jr	1244	
152	Benj. Crump	392	
153	Jos. Fabacher	359 x	
154	J. A. Blaffer	31	
155	Eugene Schmidt	27	
156	Jacob Pfaapt	809	
157	Randolph Brunning	132	
158	E. L. Godwin	231	
159	Leslie Bobb	290	
160	Louis Dubbs	773	
161	Joseph Gossie	445	
162	A. F. Marks	122	
163	John Thompson	545	
164	Page M. Baker	579	
165	E. O. Elmer	1369	
166	Paul A. Dupuy	1488	
167	A. M. Odendahl	811	
168	Richard Flower	378	
169	R. S. Haight	1025	
170	W. Tracey	1250	
171	H. L. Jackson	1231	By affidavit.
172	P. R. Rice	1419	
173	Martin Wexdig	1263	
174	M. Briedy	44	By affidavit.
175	Geo. M. Weidigo	1248	
176	B. Mancuso	336	
177	P. Nold	382	

147 UNITED STATES OF AMERICA, }
State of Louisiana. }

Criminal District Court for the Parish of Orleans.

I, Chas. J. Reilly, deputy clerk of the criminal district court for the parish of Orleans, do hereby certify that the foregoing copy of the registration or poll book of the twelfth ward, fifth precinct, is a true and correct extract copy of the names of persons who voted at the congressional election held on the sixth day of November, eigh-

teen hundred and ninety-four, in the city of New Orleans, parish of Orleans, as the same appears on file and of record in the clerk's office of the criminal district court for the parish of Orleans.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on this
[SEAL.] fifth day of May, in the year of our Lord one thousand eight hundred and ninety-seven, and in the — twenty-first year of the Independence of the United States of America.

CHAS. J. REILLY,
Deputy Clerk.

I, Joshua G. Baker, judge of the criminal district court for the parish of Orleans, do hereby certify that Chas. J. Reilly is the deputy clerk of said court; that the same is a court of record, and that the signature, Chas. J. Reilly, deputy clerk, to the foregoing certificate is in the proper handwriting of him, the said Chas. J. Reilly, deputy clerk; to his official act as such full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on
[SEAL.] the fifth day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

JOSHUA G. BAKER, *Judge.*

I, Chas. J. Reilly, deputy clerk of the criminal district court for the parish of Orleans, do hereby certify that Joshua G. Baker,
148 whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same judge of the criminal district court for the parish of Orleans, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said court this 5th day of May, 1897.

[SEAL.] CHAS. J. REILLY,
Deputy Clerk.

[Endorsed:] "H," M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

149 STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Be it known, that on this ninth day of January, in the year one thousand eight hundred and ninety-five, before me, Jefferson Charles Wenck, a notary public, in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned: personally came and appeared, Joseph Fabacher, above the full age of majority, and a resident of this city, who declared that in confirmation of an adjudication at public auction made by W. I. Hodgson, a duly licensed auctioneer, on the 18th December, 1894, whose procès verbal is hereunto annexed and made part hereof, and that for and in con-

sideration of the price and sum of eight thousand nine hundred and fifty ($8,950) dollars, cash to him in hand paid by the purchaser herein, receipt whereof is hereby acknowledged and due and full acquittance and discharge granted therefor, he does by these presents, grant, bargain, sell, convey, transfer, assign, set over and deliver with all lawful warranties and with full subrogation and substitution to all the rights and actions in warranty to which he is or may be entitled against all preceding owners and possessors, unto Mrs. Josephine McEvers, widow above the full age of majority of William T. Benedict, and a resident of this city, here also present accepting and purchasing for herself, her heirs and assigns, and acknowledging due delivery and possession thereof, the following-described property, to wit:

A certain portion of ground together with the buildings and improvements thereon, and the rights, ways, privileges, servitudes and advantages thereunto appertaining and belonging, situate in the sixth district of this city, in the square bounded by Prytania, Aline, Foucher streets and St. Charles avenue. Said portion of ground is designated as plot No. "two" on a sketch duly certified to by W. I. Hodgson, auctioneer, hereunto annexed and made
150 part hereof; according to which such sketch said portion of ground commences at a distance of sixty-two (62′) feet, six (6″) inches from the corner of Prytania and Foucher streets, and measures sixty-two (62′) feet, six (6″) inches front on Prytania street, the same width in the rear, by sixty three (63′) feet, ten (10″) inches in depth, between parallel lines.

Said portion of ground is part of a larger portion of ground (composed of the front portions of lots Nos. "five," "six," "seven" and "eight") which was acquired by said vendor, by purchase from Bartolome Pico, per an act passed before J. Bendernagel, late notary, on the 5th April 1890; duly registered Conveyance Office Book 131, folio 429.

To have and to hold said property and appurtenances unto said purchaser, her heirs and assigns, forever.

All the taxes due and payable on said property up to and inclusive of those for the year 1894, have been paid as per certificates of the city comptroller and State tax collector hereunto annexed.

By reference to the certificate of the register of conveyances for this parish, dated on the 9th day of January 1895, and hereunto annexed, it will appear that said vendor had not heretofore alienated said property.

And by reference to the certificate of the recorder of mortgages for this parish, dated on the 9th day of January 1895, and also hereunto annexed, it will appear that said property is free from all incumbrances in the name of said vendor.

And said vendor here declared that he purchased said property during the community of acquets and gains that existed between him and Mrs. Magdaline Frye, his wife, who is living and at present with him.

151 Thus done and passed, in my notarial office, at New Orleans aforesaid in presence of William Renaudin and Charles

J. Herr, competent witnesses of lawful age and residing in this city, who hereunto subscribed their names, together with said parties and me notary, on the day and date set forth in the caption hereof.

(Original signed) JOSEPH FABACHER.
JOSEPHINE McE. BENEDICT.
JEFF. C. WENCK, *Not. Pub.*

WM. RENAUDIN.
CHAS. J. HERR.

I certify the foregoing and within to be a true and correct copy of the original act on file and of record in my office.

In faith whereof I hereunto set my hand and seal this 4th day of May, A. D. 1897.

[SEAL.] JEFF. C. WENCK, *Not. Pub.*

152 UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that Jefferson Charles Wenck, before whom the annexed act of property was taken, was at the time of taking the same a notary public in and for the parish of Orleans, in the State of Louisiana, duly commissioned by the executive authority of said State of Louisiana and authorized under the laws of Louisiana to take the acknowledgement and proof of the execution of deeds and other instruments in writing and to administer oaths and affirmations to be used in any court in said State of Louisiana and for general purposes; that his signature thereto is genuine, as I verily believe; that said document purports to be taken in all respects as required by the laws of the State of Louisiana, and that said attestation is in due form and by the proper officer.

Seal of State of Louisiana. Given under my signature, authenticated with the impress of the seal of the State of Louisiana, at the city of Baton Rouge, this sixth day of May, A. D. 1897.

JOHN T. MICHEL,
Secretary of State.

[Endorsed:] Ex. I, M. G., rep. New Orleans, Jan. 9th, 1897. Sale of property. Joseph Fabacher to Mrs. Josephine Benedict. Registered, Co. Book 158, folio 166. Filed in circuit court, Waukesha Co., Jan. 5, 1898. C. W. Fraser, clerk.

153 STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Be it known, that on this tenth day of January, in the year one thousand eight hundred and ninety-five, before me, Jefferson Charles Wenck, a notary public, in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned: personally came and appeared, Joseph Fabacher, above the full age of majority and

a resident of this city, who declared that in confirmation of an adjudication at public auction made by W. I. Hodgson, a duly licensed auctioneer of this city, whose procès verbal is hereunto annexed for reference, and that for and in consideration of the price and sum of six thousand, five hundred and fifty dollars, cash to him in hand paid by Miss Elizabeth Ann Pleasants, also a resident of this city, receipt whereof is hereby acknowledged and due and full acquittance and discharge granted therefor, he does by these presents, grant, bargain, sell, convey, transfer, assign, set over and deliver with all lawful warranties and with full subrogation and substitution to all the rights and actions in warranty to which he is or may be entitled against all preceding owners and possessors, unto said Miss Elizabeth Ann Pleasants, above the full age of majority, unmarried, and here also present, accepting and purchasing for herself, her heirs and acknowledging due delivery and possession thereof, the following-described property, to wit:

A certain piece or portion of ground, together with the buildings and improvements thereon, and the rights, ways, privileges, servitudes and advantages thereunto appertaining and belonging, situate in the sixth district of this city, in the square bounded by St. Charles avenue, Prytania, Delachaise and Aline streets, said piece or portion of ground measures forty-two (42′) feet, ten (10″) inches front on
Prytania street, thirty-one (31) feet eleven (11″) inches and
154 four (4‴) lines in width in the rear, by a depth and front on
Delachaise street of one hundred and thirty-three (133′) feet, three (3″) inches and a depth and front on Aline street of one hundred and thirty two (132′) feet, ten (10″) inches. The whole according to a sketch or certificate of survey made by Chas. G. Del Isle, deputy city surveyor date 23rd November 1894 hereunto annexed and made part hereof.

Being a portion of *of* the same property which was acquired by said vendor, by purchase from Angelo Cusumano, per an act passed before J. Bendernagel, notary, on the 3rd day of February 1886; duly registered Conveyance Office Book 123 folio 751.

To have and to hold said property and appurtenances unto said purchaser, her heirs and assigns forever.

All the taxes due and payable on said property up to and inclusive of those for the year 1894, have been paid as per certificates of the city comptroller and State tax collector hereunto annexed.

By reference to the certificate of the register of conveyances for this parish, dated on the 9th day of January 1895, and annexed to an act passed before the undersigned notary on the 9th January 1895, it will appear that said vendor had not heretofore alienated said property.

And by reference to the certificate of the recorder of mortgages for this parish, dated on the 9th day of January 1895, and also annexed to an act passed before the undersigned notary on the 9th day of January, it will appear that said property is free from all incumbrance in the name of said vendor, except:

Book 326 folio 215: The assumption he took up in place of his vendor Angelo Cusumano, up to the sum of $1,593.92 as per act

passed before J. Bendernagel, late notary, on the 3rd February 1886.

Book 281 folio 629: The assumption taken by Angelo Cusumnano, up to the sum of $1,757.92 as per deed executed by Thomas
155 Duffy civil sheriff of the parish of Orleans, dated 29th December, 1885, of

Book 252, folio 665: The mortgage which per act passed before Jas. Fahey, late notary, on the 29th June, John Zucca, granted in favor of his vendor Phillip Delachaise, to secure payments of five certain promissory notes drawn by him to his own order and by him indorsed, date 9th June, 1883, and made payable each for the sum of three hundred and forty-one .66⅔ dollars, respectively in one, two, three, four and five years after date, with interest at the rate of six per cent. per annum from date until paid, and paraphed "*Ne varietur*" by said James Fahey, notary, for identification with said act passed before him (and which mortgage has been reduced to the sum of $1,366.66⅔ by the payment and cancellation of the said note payable in one year).

And now to these presents personally intervened William Renaudin of this city, who as last holder thereof, declared that payment in full had been made of the amounts of said four notes payable respectively in two, three, four and five years after date (which he presented and exhibited to me notary duly cancelled and defaced) and in consideration thereof, he hereby authorizes and requires the undersigned notary, to cause the recorder of mortgages for the parish to cancel and erase from books of his office, the inscription of said mortgage, as well as the assumption thereof taken by said vendor as per his said act of purchase passed before J. Bendernagel, late notary on the 3rd February 1886 and the assumption taken by Angelo Cusumnano, per his act of purchase executed before Thos. Duffy, civil sheriff, on the 29th December 1885.

Said vendor here declared that he purchased said property during the community of acquets and gains which existed between him and Magdalena Frye his wife, who is living and at present resides with him.

Thus done and passed, in my notarial office, at New Orleans aforesaid in presence of Charles J. Herr and Josephine Litzel-
156 mann, competent witnesses of lawful age and residing in this city, who hereunto subscribed their names, together with said parties and me notary on the day and date set forth in the caption hereof.

(Original signed) JOSEPHINE FABACHER.
ELIZABETH A. PLEASANTS.
WM. RENAUDIN.
JEFF. C. WENCK, *Not. Pub.*

CHAS. J. HERR.
JOSEPH LITZELMANN.

I certify the foregoing and within to be a true and correct copy of the original act on file and of record in my office.

[NOTARIAL SEAL.] In faith whereof I hereunto set my hand and seal this 22nd day of April, 1897.
JEFF. C. WENCK, *Not. Pub.*

157 UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that Jefferson C. Wenck, before whom the annexed sale of property was taken, was at the time of taking the same a notary public in and for the parish of Orleans, in the State of Louisiana, duly commissioned by the executive authority of said State of Louisiana and authorized under the laws of Louisiana to take the acknowledgement and proof of the execution of deeds and other instruments in writing, and to administer oaths and affirmations to be used in any court in said State of Louisiana, and for general purposes; that his signature thereto is genuine, as I verily believe; that said document purports to be taken in all respects as required by the laws of the State of Louisiana, and that said attestation is in due form and by the proper officer.

Seal of State of Louisiana. Given under my signature, authenticated with the impress of the seal of the State of Louisiana, at the city of Baton Rouge, this twenty-eighth day of April, A. D. 1897.

JOHN T. MICHEL,
Secretary of State.

[Endorsed:] Ex. J, M. G., rep. New Orleans, Jan. 10, 1895. Sale of property. Joseph Fabacher to Miss Elizabeth A. Pleasants. Registered, Co. Book 157, folio 156. Filed in circuit court, Waukesha Co., Wis., Jan. 5th, 1898. C. W. Fraser, clerk.

158 STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Be it known that on this eleventh day of June, in the year one thousand eight hundred and ninety-five, before me, Jefferson Charles Wenck, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Joseph Fabacher, above the full age of majority and a resident of this city, who declared that for the consideration, and on the terms and conditions hereinafter set forth and expressed, he does by these presents grant, bargain, sell, convey, transfer, assign, set over and deliver unto Theodore Broderick, also a resident of this city, and here also present accepting and purchasing for himself, and acknowledging due delivery and possession thereof, the following-described property, to wit:

Four certain lots of ground, together with the buildings and improvements thereon, and the rights, ways, privileges, servitudes and advantages thereunto appertaining and belonging, situate in the sixth district of this city, in the square bounded by Foucher, Aline,

Prytania and St. Charles (late Nayades) streets, on a plan in the office of W. H. Peters, late notary, as plan No. 23. Said lots are designated by the Nos. one, two, three, and four and are contiguous to each other and measure each thirty-one (31) feet, three (3″) inches front on Prytania street, by one hundred and thirty (130′) feet in depth between parallel lines, more or less.

Being the same property which was acquired by said vendor, by purchase from Duncan Galbreath, per an act passed before Jos. D. Taylor, notary, on the 11th April 1885; duly registered — Conveyance Office Book 123 folio 50.

All the taxes due and payable on said property up to and inclusive of those for the year 1894 have been paid as per certifi-
159 cates of the city comptroller and State tax collector hereunto annexed; payment of the taxes for the present year are hereby assumed by said purchaser.

To have and to hold the said property and appurtenances unto the said purchaser his heirs and assigns forever. And the said vendor binds himself, his heirs and assigns forever to warrant and defend the property and appurtenances herein conveyed, against all legal claims and demands whatever. The said vendor moreover transfers unto the said purchaser all the rights and actions of warranty to which he is, or may be entitled, against all the former proprietors of the property herein conveyed, subrogating said purchaser to the said rights and actions to be by him enjoyed and exercised in the same manner as they might have been by the said vendor.

This sale is made and accepted, for and in consideration of the price and sum of ten thousand ($10,000) dollars, which the said vendor hereby acknowledges to have received as follows, to wit: Three thousand ($3,000) dollars in cash, current money, for which he hereby grant- full acquittance and discharge and for the balance of said purchase price said purchaser has made and furnished two certain promissory notes drawn and subscribed by him to his own order and by him endorsed, dated the eleventh day of June, one thousand eight hundred and ninety-five, and made payable each for the sum of thirty-five hundred ($3,500) dollars, respectively in one and two years after date, with interest thereon at the rate of five per cent. per annum from the date thereof until paid. Which said promissory notes after having been paraphed "*Ne varietur*" by me, notary, for identification with this act have been delivered to said vendor who hereby acknowledges the receipt thereof as well as of said cash.

And in order to secure the payment of said promissory notes in capital and all interest thereon, as aforesaid vendor's lien or
160 privilege and special mortgage on the herein described and conveyed property, in favor of said vendor; and any future holder or holders of said promissory notes are hereby expressly retained by said vendor and granted by the said purchaser who hereby binds himself, his heirs and assigns not to sell, alienate nor encumber the said property to the prejudice of the mortgage herein retained.

Said purchaser furthermore binds himself, his heirs or assigns to

keep the buildings and improvements on said property constantly insured against *against* loss by fire, until the full and final payment of said promissory notes, in one or more good and solvent insurance company or companies doing business in this city; to an amount at least equal to the amount of said promissory notes or any balance which may be due thereon and to transfer such policy or policies of insurance to said vendor or any holder or holders of said promissory notes. And in default of said purchaser causing such insurance to be *affected* and transferred said vendor, or any future holder or holders of said promissory notes is and are hereby authorized to cause such insurance to be made and *affected* at the cost, charge and expense of said purchaser; but this clause shall not be construed as obligatory on such holder or holders or as making them liable for any loss, damage or injury which may result from non-insurance of the said buildings and improvements; the reimbursement of all sums paid for that purpose which are hereby fixed at one hundred dollars, as well as all attorneys' fees and costs, as herein provided for shall be secured in their payment by the special mortgage and privilege herein retained and granted, and in the event of suit being instituted for the recovery of all or any portion of said promissory note- such attorneys' fees and costs shall be collectible in the same manner, under the same process and at the same time as the principal claim.

Said purchaser further declared that in case of the non-
161 payment of all or any portion of said promissory notes as stipulated, it shall be lawful for and he hereby authorizes any holder or holders thereof, to cause all and singular the herein described and conveyed property to be seized and sold under executory or other legal process issued by any competent court without appraisement, to the highest bidder, payable cash, said purchaser hereby waiving and renouncing the benefit of all appraisement of property sold under executory or other legal process, said purchaser hereby confessing judgment in favor of any or all holder or holders, of said promissory notes together with all interest thereon, costs and attorneys' fees, however, are fixed at five per cent. on the amount for which the seizure or judgment may be obtained.

And it is furthermore understood and agreed that said purchaser shall pay the taxes on said property promptly *as* same fall due and that in case the same become delinquent, said vendor or any future hold*re* of said notes are hereby fully authorized to pay the same and thereby become subrogated and substituted to all the rights and privileges of the city and State by reason thereof, and that said vendor or any future hold*re* of said notes may charge interest on amount of taxes paid, at the rate of eight per cent. per annum from date of payment until same is reimbursed; the mortgage herein granted being extended to cover amount of said taxes, interest and all costs.

According to the certificates of the register of conveyances and recorder of mortgages in and for the parish of Orleans, it will be seen that the present vendor had not alienated the herein described and conveyed property, and that the same is free from all mortgages

or other incumbrances. Said vendor here declared that he purchased said property during the community of acquests and gains that existed between him and his wife Magdalena Frye, who is still living and at present resides with him.

162 Thus done and passed, in my notarial office, at New Orleans aforesaid in presence of William Renaudin and Charles J. Herr, competent witnesses of lawful age and residing in this city, who hereunto subscribed their names, together with said parties and me notary on the day and date set forth in the caption hereof.

(Original signed) JOSEPH FABACHER.
THEO. BRODERICK.
JEFF. C. WENCK, *Not. Pub.*

WM. RENAUDIN.
CHAS. J. HERR.

— certify the foregoing and within to be a true and correct copy of the original act on file and of record in my office.

In faith whereof I hereunto set my hand and
[NOTARIAL SEAL.] seal this 22nd day of April, A. D. 1897.

JEFF. C. WENCK, *Not. Pub.*

163 UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that Jefferson C. Wenck, before whom the annexed sale of property was taken, was at the time of taking the same a notary public in and for the parish of Orleans, in the State of Louisiana, duly commissioned by the executive authority of said State of Louisiana and authorized under the laws of Louisiana to take the acknowledgement and proof of the execution of deeds and other instruments in writing and to administer oaths and affirmations to be used in any court in said State of Louisiana and for general purposes; that his signature thereto is genuine, as I verily believe; that said document purports to be taken in all respects as required by the laws of the State of Louisiana, and that said attestation is in due form and by the proper officer.

Seal of State of Louisiana. Given under my signature, authenticated with the impress of the seal of the State of Louisiana, at the city of Baton Rouge, this twenty-eighth day of April, A. D. 1897.

JOHN T. MICHEL,
Secretary of State.

[Endorsed:] Ex. "K," M. G., rep. New Orleans, 11th June, 1895. Sale of property. Joseph Fabacher to Theodore Broderick. Registered, Co. Book 158, folio 465. Recorded, No. Book 540, folio 178. Filed in circuit court, Waukesha Co., Wis., Jan. 5th, 1898. C. W. Fraser, clerk.

161 STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Be it known, that on this seventeenth day of June in the year one thousand eight hundred and ninety-five.

Before me, Jefferson Charles Wenck, a notary public in and for the parish of Orleans, State of Louisiana, duly commissio-ed and qualified, and in the presence of the witnesses hereinafter named and undersigned: personally came and appeared, Joseph Fabacher, above the full age of majority and a resident of this city, who declared that in consideration of the love and affection that he bears toward his grandchildren Mrs. Pauline Troye wife of Samuel H. Gross, Mathias Troye, Joseph Troye, Joseph- Troye and Mary Troye, children of his daughter Mrs. Antoinette Fabacher now wife of Charles Thorman, he does by these presents, give, grant and donate by donation *inter vivos* irrevocably and forever unto his said grandchildren,

Mrs. Pauline Troye, wife of Samuel H. Gross, herein represented by said Samuel H. Gross her said husband, he also duly aiding, authorizing and assisting her herein; Mathias Troye, both above the full age of majority and Joseph Troye, Josephine Troye and Mary Troye, minors, herein represented by their mother and natural tutrix Mrs. Antoinette Fabacher, widow above the full age of majority by first marriage of Mathias Troye, and wife by second marriage of Charles Thoman, all residents of this city, accepting in the proportion of one undivided fifth each to said Mrs. Pauline Gross, Mathias Troye, Joseph Troye, Josephine Troye and Mary Troye, their heirs and assigns, and in said proportions, acknowledging due delivery and possession thereof the following-described property, to wit: A certain lot of ground, together with the buildings and improvements thereon, and the rights, ways, privileges, servitudes and advantages thereunto appertaining and belonging, situate in the third district of this city, designated by the No. "four"
165 in square No. "six" bounded by Desire, Piety, Craps or Burgundy and Love streets, said lot measuring in English measure fifty-three (53) feet, front on Desire street, by a depth of one hundred and twenty (120′) feet, between parallel lines.

Being the same property which was acquired by said Joseph Fabacher, by purchase from Mrs. Catherine Hurley and husband, per an act passed before the undersigned notary, on the 25th May 1895; duly registered — Conveyance Book 155 folio 470.

To have and to hold said property and appurtenances unto said donees, their heirs and assigns forever.

And said Joseph Fabacher here further declared that in consideration of the love and affection that he bears towards his said daughter Mrs. Antoinette Fabacher widow by first marriage of Martin Troye and wife by second marriage of Charles Thoman, he does by these presents, give, grant and donate by donation *inter vivos* irrevocably and forever unto his said daughter,

Mrs. Antoinette Fabacher, widow by first marriage of Mathias

Troye, and wife by second marriage of Charles Thoman, a resident of this city, and also present and accepting.

All and singular, the use and usufruct of the above-described property during the term of her natural life, said usufruct to cease at her death and the property herein donated thereafter to be and belong in full ownership to said donees hereinabove named, their heirs and assigns forever.

And as a condition of this donation of said usufruct herein made, she, said Mrs. Thoman, hereby binds and obligates herself to keep said property in thorough repair and condition, keep the same constantly insured against loss by fire, and pay all premiums of insurance and city and State taxes becoming due by said property, out of her said revenues.

All the taxes due and payable on said property up to and inclusive of those for the year 1894, have been paid, as per cer-
166 tificates of the city comptroller and State tax collector, annexed to said above-mentioned act of purchase of said donor herein.

By reference to the certificates of the register of conveyances and recorder of mortgages for the parish, dated respectively the 17th day of June, 1895, and hereunto annexed, it will appear that said Joseph Fabacher had not heretofore alienated said property, and that the same is free from all incumbrances in his name.

And said donor here further declared that he is not indebted unto any person; that he has ample means and other property sufficient for his support and is well able to make this donation.

167 Thus done and passed in my notarial office, at New Orleans aforesaid, in presence of William Renaudin and Charles J. Herr, competent witnesses of lawful age and residing in this city, who hereunto subscribed their names, together with said parties and me, notary, on the day and date set forth in the caption hereof. Word "of" interlined approved.

(Original signed) MRS. SAM'L H. GROSS,
Per SAM'L H. GROSS.
JOSEPH FABACHER.
MATHIAS TROYE.
MRS. ANTOINETTE THOMAN,
For Self and Minor Children.
JEFF. C. WENCK, *Not. Pub.*

WM. RENAUDIN.
CHAS. J. HERR.

I certify the foregoing and within to be a true and correct copy of the original act on file and of record in my office.

In faith whereof I hereunto set my hand and seal this 26th day of June, A. D. 1895.

[SEAL.] JEFF. C. WENCK, *Not. Pub.*

168 UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that Jefferson C. Wenck, before whom the annexed donation *inter vivos* was taken, was, at the time of taking the same, a notary public in and for the parish of Orleans, in the State of Louisiana, duly commissioned by the executive authority of said State of Louisiana and authorized under the laws of Louisiana to take the acknowledgement and proof of the execution of deeds and other instruments in writing, and to administer oaths and affirmations to be used in any court in said State of Louisiana and for general purposes; that his signature thereto is genuine, as I verily believe; that said document purports to be taken in all respects as required by the laws of the State of Louisiana, and that said attestation is in due form and by the proper officer.

Seal of State of Louisiana.

Given under my signature, authenticated with the impress of the seal of the State of Louisiana, at the city of Baton Rouge, this twenty-eighth day of April, A. D. 1897.

JOHN T. MICHEL,
Secretary of State.

[Endorsed:] New Orleans, June 17th, 1895. Donation *inter vivos*. Ex. L., M. G., rep. Joseph Fabacher to Mrs. Pauline Gross *et als.* Filed in circuit court, Waukesha county, Wis., Jan. 5th, 1898. C. W. Fraser, clerk.

169 ETAT DE LA LOUISIANE, }
Douxieme Com de District. }

MARY FREY, Femme Joseph Fabacher, }
vs. } No. 14651.
SON MARI. }

"*Ne varietur*," April 9th, 1869. E. G. Wells, not. pub.

Jugement rendu le 8 Novembre 1858.

Il est ordonne', adjuge' et de'cre'te' gue le jugement par defaut onregistre' dans celte affaire le 3 du comant, evit maintenant confirme' et render de'finitif; gu'il y ait jugement en faveru de la demanderesse et contre le de'fenden, de'cre'tant une separation de biens entre Mary Frey feeume de Joseph Fabacher, et le dit Joseph Fabacher, sou mari. Les pais de ces proce'dmes deuont etre a acquittis par le de'fendeur.

Jugement eigne'le 12 November 1858.

(Signe') R. R. HOWELL,
Juge de la Sixieme Com de District, Agissant en l'Absence du Juge Morgan.

Pour copie confoune a l'original en langen Anglaise, depose' an Guffe de la Deuxieme Com de District de la Nelle Orleans, et promulge' conformement a' la loi.

Nouvelle Orleans a 10 Juin 1868.

[SEAL.] A. C. VILLERE',
Depute' Guffier.

Un pour le'galization fe la signature a(des us de Mr. A. I. Villere De'pute Greffier de la Cour du Second District de la Nouvelle Orleans, a laguelle signature fai doit etre ajouta' tant en jugement. gue hors.

Nouvelle Orleans, le 10 Suillet 1868.

LE GERANT, *Faciouncl.*

No d'ordre 1000, Arte. 13 du Tarif Sobeit 10 francs.

J. U. V. [SEAL.]

170 STATE OF LOUISIANA:

Second District Court of New Orleans.

I hereby certify that on the eighth day of November, 1858, judgment was entered in this court in the matter of Mary Fry, wife of Joseph Fabacher, *vs.* Her Husband, No. 14651 of the docket of this court, in the words and figures following, to wit:

On motion of O. Dufour, of counsel for plaintiff, and upon producing to the court due proof of her demand—

It is ordered, adjudged, and decreed that the judgment by default herein ordered on the 3rd inst. be now confirmed and made final, and that there be judgment in favor of plaintiff and against the defendant decreeing a separation in property between Mary Fry, wife of Joseph Fabacher, and the said Joseph Fabacher, her husband. The costs of these proceedings to be borne by the defendant.

Judgment signed Nov. 12th, 1858.

(Signed) R. K. HOWELL,
Judge of the Sixth District Court of New Orleans,
Acting in the Absence of P. H. Morgan, Judge.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, on this tenth day of June, in the year of our Lord one thousand eight hundred and sixty-eight, and in the 92nd year of the Independence of the United States.

[SEAL.] A. I. VILLERE, *D'y Clerk.*

[Endorsed:] No. 14651. Second district court of New Orleans. Mary Frey, wife of Joseph Fabacher, *vs.* Her Husband. Copy of judgment. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

171 Know all men by these presents, that I, Marie Fabacher, born Frey, wife of Joseph Fabacher of New Orleans, in the State of Louisiana, but now living separated from him at Strasbourg, department of Bas Rhine, France, for and in consideration of a certain annual allowance to me made and assured by the said Joseph Fabacher by virtue of a certain contract made before the Emil Weiss, a notary public in the city of Strasbourg, France, on the 25th August 1868, and of the sum of five francs to me in hand paid by the said Joseph Fabacher, the receipt of which is hereby acknowledged, have remised, released and forever discharged the said Joseph Fabacher and by these presents do remise, release and forever discharge him from all claims and demands whatsoever arising out of my marriage with him the said Joseph Fabacher or from any other cause whatsoever except the aforesaid contract; and I do hereby give and express my full, entire and free consent that he the said Joseph Fabacher may purchase, possess, mortgage, sell and convey all — any said real estate which he may now hold and possess or which he may hereafter hold and possess in the said State of Louisiana or elsewhere, without my signature to the act or contract of purchase, sale, mortgage or conveyance; and I do further by these presents remise, release and quitclaim all the right, title, interest dower and right of dower, claim and demand that I may now or may at any time hereafter have in any of the said real estate, unto the person or persons unto whom the said Joseph Fabacher, or his executors, administrators or assigns may convey the same.

In witness whereof, I have hereunto set my hand and private seal this twenty-sixth day of August eighteen hundred and sixty-eight at the consulate of the United States of America, in the city of Strasbourg.

MARIE FABACHER. [SEAL.]

In presence of—
EDWARD ROBINSON.
WM. ZAVIER.

172 United States Consulate at Strasbourg, France.

On this 26th day of August, eighteen hundred and sixty-eight, at this consulate, before me, consul of the United States here, personally came Marie Fabacher, born Frey, known to me to be the person described in the foregoing instrument, and thereupon signed the same in my presence; on a private examination, separate and apart from her husband, she acknowledged to me that she had executed the same freely and without any fear or compulsion of her said husband, Joseph Fabacher.

Witness my hand and the consular seal the day and year last above written.

[Seal of U. S. Consul.]

EDWARD ROBINSON,
U. S. Consul.

No. 312. $2.00.
" *Ne varietur*," April 9th, 1869.
E. G. WELLS, *Not. Pub.*

[Endorsed:] Dated Aug. 26, 1868, at U. S. consulate, Strasbourg. Marie Fabacher to Joseph Fabacher. Release & consent. "Ex. J J," M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

173 *Certificate of Marriage.*

[Seal of Louisiana.]

This is to certify that I have this day joined in marriage Mr. Joseph Fabacher, of Waukesha, Wis., and Miss Magdalena Frey, of Waukesha, Wis., according to the laws of the State of Wisconsin; that they were present as witnesses Mr. Jas. Douglas, of Milwaukee, Wis., and Mr. A. S. Farnham, of Milwaukee, Wis., and that before solemnizing the same I had examined on oath both of the parties and found no legal expedient to their marriage.

Dated at Milwaukee September 30th, 1895.

THOS. F. HAYDEN,
Justice of the Peace, Milwaukee Co., Wis.

[Endorsed:] Ex. M M, M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

174 Copy.

NEW ORLEANS, *June 12th*, 1895.

On demand after date I promise to pay to the order of myself three thousand dollars, with interest at — per cent. per annum, at ——, value received.

No. —. Due ——.

(Signed) THEO. BRODERICK.

[Endorsed:] (Signed) Theo. Broderick. I I, M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 6, 1898. C. W. Fraser, clerk.

175 This agreement, made in duplicate this 9 day of October, A. D. 1893, by and between Michael Meyer of the village and county of Waukesha, Wisconsin, party of the first part and Joseph Fabacher of New Orleans, La., party of the second part;

Witnesseth, that the said party of the first part, for and in consideration of the payments to be made to him by the said party of the second part, as hereinafter provided, do hereby covenant, contract and agree to erect, construct and complete a dwelling-house according to the plans and specifications of one certain house now being built by said party of the first part for one Margaret Haertel upon College avenue in the village of Waukesha, situate between houses owned and occupied by E. Merton and —— Horn, and to be a duplicate of said Haertel's house, with the exceptions hereinafter set forth, in a good, substantial and workmanlike manner, to the satisfaction of, and under the direction of part- of the second part.

And the said party of the first part also does agree to find, provide and furnish all the necessary materials, perform all labor and pay for the same, for the completing and finishing of said dwelling-house upon a portion of lot No. one of R. N. Kimball's subdivision of block Z of northwest addition to plat of Prairieville, now Waukesha, having a frontage on the southeasterly side of Pleasant avenue of 200 feet and a frontage on northerly side of Bridge street of 100 feet on or before the first day of June, 1894.

The front doors shall be of white oak; there shall be half screens to all windows and screen doors for all outside doors, all shall receive three coats of good paint of — colors to be chosen by party of second part; there shall be 10 feet clear between the ceiling
176 and floor of first or ground floor and nine feet clear between floor and ceiling of second-story rooms; all lower sills and joists shall be free from sap and all lumber used shall be good; all shingles used on roof shall be California cedar; all gutters and valleys and flashing around chimneys shall be of best I. C. roofing tin; cistern shall be given three good coats of cement inside and out; all gas, water and sewer pipes shall be carried six feet outside building towards Bridge street; there shall be a substantial iron fence around balcony; no extra work shall be allowed except at special instance and request of second party. Party of first part to furnish all material necessary for full and complete plumbing of said house, and shall furnish and put in all necessary pipes or flues for heating same throughout by furnace.

And the said party of the second part for and in consideration of the party of the first part completely and faithfully executing the aforesaid work, and furnishing all the materials therefor, so as to fully carry out this contract, and the design according to its true spirit, meaning and intent, and by and at the times mentioned and to the full satisfaction of party of the second part, does hereby agree to pay to the said party of the first part the gross sum of twenty-five hundred ($2,500.00) dollars, as follows, to wit: The sum of eight hundred dollars when the roof is completed; the sum of eight hundred dollars when the plastering is completed, and the sum of nine hundred — on the satisfactory completion and acceptance of the entire work, and as soon thereafter as the party of the second part is assured against the existance of any mechanic's lien or claim or notice of any lien or claim whatsoever, against said premises.

And it is further agreed, by and between the parties aforesaid:

1st. That all payments made on the work during its progress are on account of this contract and shall in no case be construed as an acceptance of the work executed, and materials furnished, and that the party of the first part shall be liable to all the conditions
177 of the several agreements until the work is completed and accepted as finished.

2nd. That the party of the second part shall only be responsible for loss or damage by fire to the amount of estimates issued up to the time according to this contract, and that in case the party of the first part shall in the performance of this contract dig up, use or occupy any street, alley, highways or public grounds of said village

of Waukesha, the said party of the first part does hereby assume liability for, and will pay on demand any and all damages which may result therefrom, and further will indemnify the party of the second part from any loss or damage that may happen said works, or persons and their property employed in the progress or completion of said work.

3rd. That all questions as to the quality of work done or materials furnished under this contract, and as to the true intent and meaning of said plans and specifications, shall be decided by said party of the second part, and that said party of the second part may cause any unsound work, or work not done in accordance herewit-, to be altered at the expense of the party of the first part.

4th. That said party of the first part shall not assign this contract or any interest therein, without the consent in writing of the party of the second part, and in violation of the above, the party of the second part shall have the right and discretion to rescind this contract and to declare the same null and void, or to relet the said work to some other competent party, and hold the party of the first part liable for all damages therefrom.

5th. That the party of the second part may at any time before the completion of said building occupy the same and that the said occupation and possession shall in no manner be considered or construed as an acceptance of the whole or any part of said build-
178 ing or of any work performed therein.

All doors to have modern mortice locks.

In witness whereof the parties aforesaid have hereunto set their hands and seals the day and year above written.

MICHAEL MEYER. [SEAL.]
JOSEPH FABACHER.

In presence of—

OSCAR SPERBER.
JOHN SPERBER.

[Endorsed:] Ex. A*a*, identification. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

179 *Statement*

Of personal property subject to taxation in ——, of ——, county of Waukesha, State of Wisconsin, for the year 1896, belonging to —— ——, school district No. —.

	No.	Valuation by owner.	Valuation by assessor.	Remarks.
1. Horses of all ages	2	$40.00	$	
2. Neat cattle of all ages				
3. Mules and asses of all ages				
4. Sheep and lambs				
5. Swine				
6. Waggons, carriages, and sleighs				
7. Gold and silver watches	2	$30.00		
8. Pianos, organs, and melodeons				
9. Saw-logs				
10. Timber				
11. Railroad ties				
12. Telegraph poles				
Total valuation of above items of personal property		$90.00		
13. Merchants' and manufacturers' stock				
14. Average amount of moneys in possession or on deposit during year				
15. Average amount of notes, bonds, mortgages, and other securities for debts due or to become due for each and every month during the year ending May 1, over and above the average amount of *bona fide* unconditional debts owing for each and every of said months as determined under section 1056, R. S.				
16. Grain and farm products				
17. Private libraries in excess of $200.00				
180 18. Kitchenand other household furniture in excess of $200				
19. All other personal property not including above and not exempt				
20. Leaf tobacco				
21. Steamboats, vessels, and other water crafts				
Total value of all personal property		$90.00		
22. Number of wide-tired wagons used by farmer				
23. Number of wide-*guage* sleighs				

STATE OF WISCONSIN, } ss:
Waukesha County, }

I, Joseph Fabacher, having been examined under oath by C. S Hartwell, assessor, as to all items of personal property owned by me or my wife or which I have in charge or possession as lessee occupant, agent, mortgagee, pledgee, parent, guardian, executor, administrator, trustee, assignee, or receiver, which is liable to taxation, and as to the value thereof, do hereby solemnly swear that the above statement of said personal property is correct according to the best of my knowledge and belief, and that in deducting the amount of my indebtedness I have deducted no other than *bona fide* and unconditional debts, and have not exceeded the true amount thereof.

JOSEPH FABACHER.

Subscribed and sworn to before me this 26th day of June, A. D. 1896.

C. S. HARTWELL, *Assessor.*

181 STATE OF WISCONSIN, } ss:
Waukesha County, }

This is to certify that I, James M. Kerr, clerk of the city of Waukesha, Waukesha county, Wisconsin, have carefully examined the sworn statement of personal property, assessed for taxes in the year 1896 belonging to Joseph Fabacher, deceased, and do hereby certify that the annexed has been compared by me with the original statement on file in my office of city clerk of said city, and that the same is a true copy of said original and the whole thereof, as the same now appears and now remains on file of record in my office as city clerk aforesaid.

[CORPORATE SEAL.] In witness whereof I have hereunto set my hand and fixed the corporate seal of the city of Waukesha, Wisconsin, this 21st day of July A. D. 1897.

J. M. KERR,
Per L. E. RIBLETT,
City Clerk Deputy.

[Endorsed:] Ex. B B, M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

FOLD OUT IS TOO LARGE TO BE FILMED

186 EX. G G. M. G., REP.

Second ward.

Register of Wisconsin Electors, 1896.

187 Register of electors of Second Ward election district, in the city of Waukesha, county of Waukesha, made by the board of registry of said district, Tuesday and Wednesday, Oct. 27 & 28, 1899.

☞ Entries are to be made in the columns for streets and numbers only in cases where the person whose name is registered resides within the bounds of a city or incorporated village.

	Name of electors.	Name of street, etc.	No. of dwelling.
1	188 Arndt, Chas.	North St.	
2	Abel, H. W.	Barnard St.	200
3	Austin, Jas.	Spring St.	107
4	Anderson, Sam.	Madison St.	311
5	Anderson, C. C.	Fourth St.	116
6	Anderson, Peter	North St.	717
1	189 Blair, H. E.	Madison St.	312
2	Brunner, M. H.	North St.	
3	Blair, F. C.	Madison	331
4	Bahr, Jacob	Pewaukee Ave	520
5	Bartels, John	Brook St.	202
6	Brecher, Carl.	North "	301
7	Bahr, Peter	Pewaukee Ave.	520
8	Badinger, Allen	Barnard St.	
9	Barber, A. H.	St. Paul Ave., Keeley	
10	Brann, Chas.	Brook St.	206
11	Bowe, Dennis	St. Paul Ave.	308
12	Barber, Henry	Pewaukee St.	529
13	Bidwell, "	Summitt Ave.	
14	Balzer, Geo.	North St.	501
15	Brandenbery, Aug.	St. Paul Ave.	110
16	Bruder, Chas.	Madison St.	
17	Bartholmer, Henry	" "	
18	Barnard, Wm. H.	Barnard "	117
19	Bohrman, Chas.	St. Paul Ave.	325
20	Brecher, C. F.	North St.	301
21	Brown, A. C.	Fox River house.	
22	Bornheimer, John	North St.	511
23	Brunner, Conrad	Barstow St.	204
24	Burk, John	Mary St.	207

	Name of electors.	Name of street, etc.	No. of dwelling.
25	Boone, Geo. H.	North St.	510
26	Bradley, A. J.	St. Paul Ave.	223
27	Bowe, Ben.	" " "	308
28	Bowe, James	" " "	308
29	Bowe, John	" " "	308
30	Brearid, John	Madison St.	102
31	Bright, W. H.	St. Paul.	
32	Bartz, Fred.	North St.	613
33	Berdine, Aug.	Miner St.	212
34	Brownell, C. V.	Madison St.	703
35	" C. W.	" "	703
36	Brandt, Joseph.	" "	106
37	Benson, Benjamin.	" "	311
38	Badinger, Adam.	Sum-itt Ave.	
39	Burney, Elwin	Madison St.	106
40	Barton, Wm.	Delafield	
1	190 Casebeer, Wm.	Bidwell Ave.	111½
2	" David.	Pewaukee St.	
3	Carstens, Chas.	Caldwell.	102
4	Canklin, W. H.	St. Paul Ave., E.	112
5	Carstens, John, Sr.	Madison	601
6	Canfield, E. H.	Barnard St.	218
7	Carstens, John, Jr.	Madison St.	601
8	Cook, Alex.	North St.	500
9	Conrad, J. D.	Fourth St.	120
10	Cromwell, J. P.	Mary St.	
11	Cleary, Thomas.	Fox River house	
12	Colly, Pat.	Madison St	106
13	Cronk, A.	Madison St.	518
14	Cronk, Frank.	Delafield.	306
15	Carberry, John.	Barstow St.	113
16	Castine, W.	Washington St.	
17	Coleman, G. B.	Madison St.	100
18	Clary, Francis.	Cor. Madison, Hyde Park.	
19	Callender, O.	Barnard St.	206
20	Clutterbuck, James E.	Summitt Ave	
21	Cartridge, John.	Albert St.	207
22	Cronk, Henry.	St. Paul Ave.	112
23	Clutterbuck, Owen.	Chamberlin house.	
24	Carstens, Henry.	Madison St.	601
25	Carstens, Daniel.	" "	601
26			
27			
28			
29			

	Name of electors.	Name of street, etc.	No. of dwelling.
30			
31			
32			
33			
34			
35			
36			
37			
38			
39			
40			
1	191 Deno, Fred	St. Paul Ave	312
2	Dahms, Fred	North St	
3	Deck, John	Madison St	406
4	Davidson, Alex.	Fox River house	
5	Doney, R. L.	Barnard St	216
6	Diehl, Hugo	St. Paul Ave	327
7	Deveraux, Rob't	St. Paul Ave	120
8	Dent, J. S.	Barnard St	219
9	Dick, Fred	Barnard St	112
10	Damm, Jacob	Barstow St	202
11	Dent, Wm. S.	Barnard St	219
12	Deakin, Walter	Hyde Park	107
13	Downey, James	Madison St	311
14	Dalamater, A. H.	Londall	
15	Damaschiz, S.	Barstow St	227
16	Downey, Wm.	St. Paul Ave	212
17	Dunn, Chas.	Fox River house	
18	Downey, Chas. P.	North St	107
19	Derdrick, M.	Ann St	120
20	Downey, Chas.	North St	107
21	Dailey, Henry	Barnard St	201
22	Dailey, John	Pewaukee Ave	
23	Douseman, E. W.	Madison St	604
24	Dailey, Clifton	Madison St	505
25	Dailey, Frederick	Pewaukee Ave	
26	Deno, John	St. Paul Ave	312
1	192 Estberg, A. F.	St. Paul Ave	208
2	Eimer, Jos.	North St	721
3	Estberg, C. A.	St. Paul Ave	212
4	Enos, H. M.	Barstow St	502
5	Edler, Henry	North St	107
6	Emsly, James	Barnard St	112
7	Elliott, A. J.	North St	309
8	Evrard, Alex.	Madison St	208

	Name of electors.	Name of street, etc.	No. of dwelling.
9	Elliott, Geo.	Summitt Ave.	
1	Federer, Albert	Mary St	205
2	Freudenstine, Fred.	Spring St.	200
3	Freudenstine, Henry	Madison St.	506
4	Freudenstine, Louis	Spring St.	202
5	Fody, J. L.	Cambrien house	
6	Fuller, G. E.	Madison St.	409
7	Fuller, W.	North St	125
8	Fish, Peter M.	Maria St	209
9	Frank, Martin	Madison St.	104
10	Frank, Conrad	Madison St.	106
11	Fisher, Fred.	Madison St.	
12	Fallon, Pat.	Barstow St.	119
13	Flynn, Tho.	Collins St.	200
14	Falk, Julius	North St.	209
15	Ferguson, Wm.	Madison St.	101
16	Frank, John C.	Madison St.	231
17	Fredendall, Phillip	St. Paul Ave., Keeley	
18	Fabacher, Joseph	Barstow St.	414
19	Folkman, John	North St.	
20	Frank, John	Barstow St.	210
21	Frank, Conrad, Jr.	Albert St.	209
22	Franz, John	Washington	
1	193 Gowans, W. P.	North St.	
2	Genz, John, Sr.		
3	Gauthrie, Joseph	Washington St.	208
4	Grabow, Otto	Maria	215
5	Gray, John	Madison St.	105
6	Greasel, John	Union St.	
7	George, Carl	North St.	303
8	Griffin, Albert E.	North St.	600
9	Gallagher, John	Union St	112
10	Goetz, Henry	Caldwell Ave.	102
11	Gothow, Chas.	Buckley Add	
12	Gump, Falix	Arline St.	
13	Gentz, Mat.	North St.	
14	Graef, Phillip	Fourth St.	121
15	Gorder, Chas. A.	Madison St	605
16	Grabow, Fritz	Maria St.	215
17	Gebhardt, Wm.	North St	104
18	Gysel, Otto	North St.	129
19	Goerke, Albert	Barnard St.	111
20	Grover, Chas.	Madison St	217
21	Gillett, John	Prospect St.	105
22	Grabb, Walter	Maria St.	212

	Name of electors.	Name of street, etc.	No. of dwelling.
23	Gipson, Theo.	Collins St	
24	Green, Wm.	Hyde Park Ave.	
25	Goerke, Gus.	Barnard St.	111
26	Gleissner, Jas.	Third St.	105
27	George, Rob't	Pewaukee Ave.	518
28	Goldman, Jacob	Madison St.	305
29	Gilman, Chas.	Madison St.	107
30	Gauthie, Wm.	Washington St.	208
31	Gilkey, Geo. W.	Madison St.	703
32	Golemgeske, Louis.	Barnard St.	121
33	Gentz, Andrew	North St.	305
1	194 Hook, John	Union St.	201
2	Harris, N. W.	Hyde Park	
3	Henschel, Ed. A.	St. Paul Ave.	300
4	Hertelt, Gus.	North St.	777
5	Heibel, Frank	North St.	609
6	Hartman, Wm.	Union St.	214
7	Hook, Edward	Union	201
8	Harris, Jacob.	St. Paul Ave	236
9	Herwig, Fred.	Maria St.	211
10	Hannon, Pat.	St. Paul Ave.	212
11	Hassler, Fred.	Delafield Ave.	300
12	Humboldt, Ed.	Mary St.	209
13	Haight, T. W.	St. Paul Ave.	320
14	Hardy, Rob't	North St.	407
15	Hartig, Wm.	North St.	110
16	Hawlett, Wm.	St. Paul Ave.	122
17	Haverstine, Gotfrid.		
18	Hankey, Aug.	North St	201
19	Hofner, Leonard	Madison St.	106
20	Hubethal, F. W.	Madison St.	512
21	Hoenig, Frank	St. Paul Ave.	108
22	Harris, Wm.	Madison St.	
23	Horr, Chas.	Washington St.	
24	Horr, Henry	St. Paul Ave.	208
25	Hassler, Henry	Bidwell Ave.	108
26	Hudson, A. B.	Spring St.	107
27	Herbst, John	North St.	509
28	Howard, J.	Delafield Ave.	248
29	Hughes, M. H.	Barnard St.	205
30	Hepp, Albert J.	Madison St.	704
32	Hohenstine, Edward	Maria St.	203
1	195 James, Peter	Barstow St.	502
2	Johnson, K. E.	Barstow St.	107
3	James, J. R.	Barnard St.	209

	Name of electors.	Name of street, etc.	No. of dwelling.
4	Jones, E. O.	Madison St.	502
5	James, Ed.	St. Paul Ave.	108
6	Jackson, Geo.	Washington St.	
7	Jones, Wing.	Collins St.	
1	196 Kutzner, G. B.	Madison St.	413
2	Kroeger, Chas.	Palmyra St	
3	Kerr, W. B. H.	Barnard St.	
4	Kerr, W. M.	Barnard St.	
5	Kimball, E. K.	North St.	
6	Kranish, Henry	Ann St.	112
7	Kardrige, Mat.	Albert St.	207
8	Krumhaus, Fred.	Buckley Add.	
9	Katelson, Geo.	Madison St.	100
10	Kline, Chas	North St.	704
11	Kremer, John.	Union St.	208
12	Knoebel, John.	North St.	
13	Koll, J. L.	Madison St.	641
14	Koch, Wm. A.	Madison St.	415
15	Kirschner, M.	St. Paul Ave	318
16	Kennedy, Mat.	St. Paul Ave	100
17	Kellog, L.	Prospect Ave.	110
18	Kremer, Edw'd	Union St.	204
19	Koll, Wm.	Madison St.	641
20	Kelley, Dennis.	Barstow St.	120
21	Kremer, Geo.	Union St	206
22	Krimer, Chas.	Union St	204
23	Knoebel, Louis.	North St.	
24	Kooitz, John	St. Paul Ave.	122
25	Kent, L. M. W.	State St.	327
26	Knoebel, Frank	North St	
27	Kells, Geo	Ann St.	114
28	Kendall, Geo.	Maria St.	216
29	Kranish, Louis	Barnard St.	114
30	Kelley, Mat.	Madison St.	217
31	Koehler, Chas.	North St.	
32	Kelley, B. J.	Madison St	
33	Kranish, Chas.		
34	Knocke, Wm. C.	Madison St.	209
35	Kuehne, Gustav	St. Paul Ave.	
36	Krusa, Henry.	Madison St.	107
37	Knoebel, Albert	North St.	
1	Lubner, Gus.	North St.	715
2	Law, Ben.	Barstow St.	212
3	Law, John	St. Paul Ave	114
4	Lewis, H. D	Washington St.	133

	Name of electors.	Name of street, etc.	No. of dwelling.
5	Lawler, Dan	Madison St	
6	Lefferman, Fred	Brook —	208
7	Lippoldt, Wm. C	St. Paul Ave. E	130
8	Law, Albert	St. Paul Ave. W	114
9	Light, Nathan	North St	
10	Linds, Henry	North St	407
11	Loeberman, Aug	Mary St	203
12	Ludwig, A	Chicago Ave	406
13	Lynch, Jas	St. Paul Ave	
14	Lottner, Mat	North St	612
15	Law, Otto	St. Paul Ave	114
16	Law, Ed	St. Paul Ave	114
17	Leightner, John	Madison St	106
18	Law, Alfred	St. Paul Ave	
19	Lawrie, Wm	Madison St	217
20	Litt, Fred	North St	213
21	Lottner, Simon	North St	
22	Lidicker, Henry	Fairbrew St	110
23	Leitner, Chas	North St	213
24	Liskowitch, Simon	Mary —	311
1	197 Milke, Wm	North St	
2	Marlowe, Fritz	Fourth St	119
3	Marx, A. H	Delafield St	250
4	McCumber, Wm	Madison St	510
5	Miller, F	St. Paul Ave	228
6	Mellon, E. J	Barstow St	116
7	McCann, John	St. Paul Ave	214
8	McCumber, R. B	Madison St	508
9	Merritz, Richard	Madison St	200
10	McCumber, Frank	Madison St	508
11	Minick, Carl	Mary St	209
12	Menard, P. J	Barstow St	107
13	Minick, Louis	Mary St	209
14	Miller, John	Union St	114
15	Mevis, Fred	Madison St	217
16	Mettler, Frank	North St	104
17	Munger, John	North St	212
18	Mainona, Henry	Madison St	
19	Martin, Geo		
20	Macco, Nelson	Summit Ave	
21	Minick, Adam	North St	215
22	Merkie, Albert	Fox River house	
23	Minick, Chas	Mary St	209
24	Murphy, Jim	Collins St	200
25	Mason, F. H	Fairbrew St	104

	Name of electors.	Name of street, etc.	No. of dwelling.
26	McNiece, J. H	St. Paul Ave., Keeley	
27	Mattson, Otto	Madison St	212
28	McMahon, Thos	St. Paul Ave	118
29	Moffit, Chas	St. Paul Ave	
30	Maile, John	Bidwell St	112
31	Milke, John	North St	
32	McGern, John	Ann St	115
33	Maleschitz, Fabian	Brook St	206
1	198 Neufoff, F. W	St. Paul Ave	106
2	Nehs, Chas	Madison St	613
3	Nohl, Wm	North St	
4	Nagle, J. C	State St	325
1	199 Parker, Wm		
2	Plotz, Chas. H	North St	117
3	Powers, John	North St	
4	Price, Wm	Madison St	101
5	Polleck, A	St. Paul Ave	118
6	Parnell, John	North St	
7	Paradise, John	St. Paul Ave	122
8	Pluckhahn, John	Ann St	123
9	Powers, Thomas	North St	
10	Pluckhahn, C. T	Ann St	123
11	Pool, Frank	Delafield St	248
12	Prior, J. A	St. Paul Ave	110
13	Pritzloff, Aug	Collins St	207
14	Petre, Wm	Madison St	100
15	Prior, John	Madison St	413
16	Powers, J. E	Barnard St	
17	Pokrandt, Gus	Chicago Ave	
18	Patterson, John	Cambrian house	
19	Peiper, Franz	Collins St	216
20	Palmer, T	Summit Ave	
21	Peter, E. W	Pewaukee St	529
22	Pedniski, Thos	North St	
23	Perkins, Geo. N	St. Paul Ave., Keeley	
24	Perkins, Palvin	St. Paul Ave., Keeley	
1	200 Raycroft, John	Mary St	209
2	Regan, M	St. Paul Ave	204
3	Rafter, Isaac	Chicago Ave	408
4	Russell, Richard	St. Paul Ave	124
5	Raynor, Chas	Delafield "	308
6	Rabb, John	Union St	
7	Rehs, Hermann	Barstow St	208
8	Roth, Geo	St. Paul Ave	315
9	Robinson, A. W	St. Paul " Keeley	

	Name of electors.	Name of street, etc.	No. of dwelling.
10	Russell, Thos.	St. Paul Ave.	124
11	Reimer, John	Madison St.	515
12	Russell, J. J.	St. Paul Ave.	120
13	Russell, Jerry	Ann St.	116
14	Reese, G. A.	Madison St.	309
15	Roberts, R. L.	Madison St.	
16	Rave, Chas.	Ann St.	123
17	Rothenbach, Chas.	North St	
18	Rosenmerkel, John	Third St.	108
19	Russell, Thos.		
20	Raeber, Phillip	Fourth St.	
21	Russell, Pat	St. Paul Ave.	124
22	Russell, R. J.	Ann St.	116
23	Rhinold, Adam	Madison St.	106
24	Reise, Hugo	Collins St.	
25	Roberts, W. D	Madison St.	411
26	Ross, Chas.	Madison "	704
27	Russell, Richard	Ann St.	116
28	Russell, P. H.	Brook St.	208
29	Ross, John	Madison St.	704
30	Raynor, Wallie	Cambrien house.	
31	Rankin, John	Barstow St.	
32	Robinson, James	St. Paul Ave., Keeley	
33	Reed, M. S.	North St.	106
34	Ross, Wm.	Washington Ave.	
1	201 Sloan, John	St. Paul Ave.	232
2	Schautz, A. C.	St. Paul "	128
3	Stutz, Wenzel	North St.	711
4	Schinkawitz, John	North St	211
5	Schradel, Anton	Madison St.	228
6	Schmitz, Mathias	Madison "	217
7	Spence, Thos. C.	Madison "	
8	Schley, Aug.	Barnard "	115
9	Schock, Frank	North St	207
10	Seabold, Michael	Madison St.	413
11	Scheetz, Wm.	Maria "	207
12	Schock, Frank	Madison "	201
13	Sloan, Wm.	St. Paul Ave.	232
14	Sevenyer, Geo.	Maria St.	204
15	Stoeckels, Jno. S.	Barstow St.	214
16	Schmeer, Fred.	St. Paul Ave.	
17	Smokey, E.	North St.	203
18	Sullivan, Tim.	North "	103
19	Schefiles, John	Fourth St.	112
20	Smart, M. E.	North "	407

	Name of electors.	Name of street, etc.	No. of dwelling.
21	Stark, Albert	Madison St	103
22	Schautz, Jacob	Maria "	208
23	Shock, Peter	North "	207
24	Stechan, F	North "	
25	Sherman, Geo. F	Fox River house	
26	Sheets, Joe	Maria St	107
27	Stark, E. J	Maria "	607
28	Smith, John	Spring "	114
29	Stabb, Adam	Barnard "	214
30	Sloan, Chas	St. Paul Ave	232
31	Schmitzke, Aug		
32	Stubenfull, John	Albert St	210
33	Schoeber, Fred	Greenwood "	
34	Sharping, C. R	North "	107
35	Stoeckel, Henry	St. Paul Ave	108
36	Stacy, Peter	North St	109
37	Schettler, C. M	St. Paul Ave	
38	Schlossman, Samuel	Spring St	200
39	Smith, H. A	Madison —	311
40	Sch——, John	St. Paul Ave., Keeley	
1	Sloan, M. P	St. Paul Ave	232
2	Sweet, Ernst	Fox River house	
3	Schoeber, Geo	Greenwood Ave	
4	Salla, Juiluis	Lamira St	
5	Silber, Isaac	Madison "	305
6	Schwark, Michel	North "	
7	Schaub, Ed	Madison "	700
8	Steuert, Luies	Lamira "	
9	Sweet, W. J	Madison "	208
10	Schrinner, Albert	Delafield "	252
1	202 Trakel, Chas. J	St. Paul Ave	410
2	Trakel, Adolph	Union St	202
3	Trakel, Ernst	" "	202
4	Thayer, Ashley	" "	
5	Thielman, Henry	Madison "	209
6	Threelore, Wm	" "	410
7	Trakel, Edward	Union "	202
8	Tierney, John	Maria "	210
9	Thielman, Louis	Madison "	209
10	Thompson, D. H	North "	107
11	Tiller, Rob't C	Madison "	311
12	Thornton, Henry	Londale "	
13	Thayer, Alonzo	Union "	214
14	Tierney, Wm	Fourth "	
15	Thorsen, Dedrick	Madison "	307

	Name of electors.	Name of street, etc.	No. of dwelling.
16	Theede, Wm.	Barstow St.	107
17	Taylor, John	Bidwell Ave.	119
1	203 Ulrick, Wm.	Ann St.	122
2	Ulrick, Henry	Madison "	616
1	Valentine, J. J.	Madison St.	311
2	Voigt, Gus.	Washington "	
3	Vedder, Harry M.	Hyde Park Ave.	201
4	Vreeland, Wm.	St. Paul Ave.	112
5	Vogt, Anton	Third St.	106
6	Vogt, Joseph C.	Barstow "	207
1	204 Williams, Fred.	North St.	108
2	Weimeier, Julius.	" "	
3	Witte, Rob't.	Barnard "	114
4	Westerdale, John	Fourth "	117
5	Wilke, Herman	Buckley Add.	
6	Wheeler, G. H.	Third St.	105
7	Wood, Bert	Barnard "	217
8	Wilkins, Edwin	Delafield "	225
9	Whitney, W. F.	" "	200
10	Wallrabenstein, Nick	Bidwell "	4
11	Welch, Michael	Mary "	117
12	Worden, A. F.	Madison "	408
13	Weber, Stephen	North "	206
14	Weber, Wm. A.	" "	134
15	Weichers, John L.	Barnard "	207
16	Wolfe, W. P.	Madison "	702
17	Willingham, David	Fox River house	
18	Wentworth, Chas.	Barstow St.	
19	Wassick, Frank	St. Paul Ave.	120
20	Wheeler, G. F.	Third St.	105
21	Walker, Frank	Maria "	
22	Welch, A. V.	Third "	109
23	Weisenthal, Wm.	Madison "	700
24	Wallner, Fred. C.	North "	206
	205–207		
1	Yeroesheck, Frank	Brook St.	200
2	Yankee, Louis	Madison "	200
3	Yanke, Albert E.	" "	200

208 STATE OF LOUISIANA, }
Parish of Orleans. } [SEAL.]

No. 400.

State Taxes for 1896.

NEW ORLEANS, *Aug.* 24, 1896.

Received of M. Joseph Fabacher three and $\frac{45}{100}$ dollars, amount of State and Orleans Levee District taxes for the year 1896 on the property described on the reverse hereof, in accordance with law.

B. F. WALSHE,
State Tax Collector 6th Dist., Comprising 6th and 7th Municipal Dists.
PAUL SEOLZ, *Deputy.*

State tax	$3.00
Levee tax	.40
Interest	.05
	3.45

The tax-payer should present this tax receipt to the recorder of mortgages (office corner Royal and Conti Sts.), who will cancel the mortgage against the property described on this receipt.

Endorsements.

Duplicate.

NEW ORLEANS, *April* 27, '97.

I hereby certify that this paper is a duplicate of receipt No. 400, issued Aug. 24th, 1896, and is a true copy of said receipt No. 400, and that said tax of $3.45 was paid on assessment, as per mem. on back of this paper, of $500 on furniture, etc., by Mr. Theo. Broderick.

B. F. WALSHE,
State Tax Collector 6th Dist., Parish of Orleans.

[Endorsed:]

Sixth municipal district,			merchandise or stock in trade, square No. —	$
"	"	"	Cash on hand, money loaned, square No. —	
"	"	"	Live animals of all kinds, square No. —	
"	"	"	Vehicles of all kinds (Burtheville), square No. —	
"	"	"	Furniture, etc., exceeding $500 in value, '94	$500
"	"	"	Jewelry, plated ware, etc	
"	"	"	Household ornaments, etc	
"	"	"	Real estate	

Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

209 UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that Blaney T. Walshe was at the time of signing the annexed document State tax collector 6th & 7th districts in and for the parish of Orleans, having been duly appointed, commissioned, and qualified as such, and that I verily believe the signature to the attached instrument of writing is his genuine signature, and that said document is in proper form and by the proper officer.

Given under my signature, authenticated with the impress of the seal of the State of Louisiana, city of Baton Rouge, this twenty-eighth day of April, A. D. 1897.

Seal of Louisiana.

JOHN T. MICHEL,
Secretary of State.

[Endorsed:] "R," M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

210 COMPTROLLER'S OFFICE, NEW ORLEANS, *Apr. 29th*, 1897.

This is to certify that the tax in the name of Jos. Fabacher upon the property described herewith and amounting to the sum of two hundred & eighty dolls. has been paid for the year 1895.

Said property being situated — 14th assessment district—

Square No. 377, Prytania, St. Charles, Foucher, Aline, lots 1–4, 31 x 130. 312

" 378 " " Delachaise, " " 31 x 311.

" 377 assessed at 9,500.00.

" 378 " " 4,500.00.

as appears from the records in this office.

[SEAL.]

P. ALPHONSE RABOUIN,
Comptroller.

211 UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that P. Alphonse Rabouin was at the time of signing the annexed document comptroller in and for the city of New Orleans, parish of Orleans, having been duly elected, commissioned, and qualified as such, and that I verily believe the signature to the attached instrument of writing is his genuine signature, and that said document is in proper form and by the proper officer.

Elected April 21st, 1896; term of office, four years.

Given under my signature, authenticated with the impress of the seal of the State of Louisiana, city of Baton Rouge, this thirtieth day of April, A. D. 1897.

Seal of Louisiana.

JOHN T. MICHEL,
Secretary of State.

[Endorsed:] Ex. S, M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

212 COMPTROLLER'S OFFICE, NEW ORLEANS, *Apr. 29th*, 1897.

This is to certify that the tax in the name of Jos. Fabacher upon the personal property described herewith, and amounting to the sum of nineteen doll's, $19.00, has been paid for the year 1895, said property being situated — 14th assessment district, square No. 377, Pr-tania, Aline, St. Charles, Foucher, assessed 950.00, as it appears from the records in this office.

[SEAL.] P. ALPH. RABOUIN,
Comptroller.

213 UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that P. Alphonse Rabouin was at the time of signing the annexed document comptroller in and for the city of New Orleans, parish of Orleans, having been duly elected, commissioned, and qualified as such, and that I verily believe the signature to the attached instrument of writing is his genuine signature, and that said document is in proper form and by the proper officer.

Elected April 21st, 1896; term of office, four years.

Seal of Louisiana. Given under my signature, authenticated with the impress of the seal of the State of Louisiana, city of Baton Rouge, this 20th day of April, A. D. 1897.

JOHN T. MICHEL,
Secretary of State.

[Endorsed:] "T," M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

214 COMPTROLLER'S OFFICE, NEW ORLEANS, *Apr. 29th*, 1897.

This is to certify that the tax in the name of Jos. Fabacher upon the personal property described herewith and amounting to the sum of ten doll's, $10.00, has been paid for the year 1896, said property being situated — 15th assessment district, square No. 94, Calhoun, Saratoga, S. Franklin, Foucher, assessed $500.00, as appears from the records in this office.

[SEAL.] P. ALPH. RABOUIN,
Comptroller.

215 UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that P. Alphonse Rabouin was at the time of signing the annexed document comptroller of the city of New Orleans, in and for the parish of Orleans, having been duly elected, commissioned, and qualified as such, and that I verily believe the signature

to the attached instrument of writing is his genuine signature, and that said document is in proper form and by the proper officer

Elected April 21st, 1896.

Term of office, four years.

Given under my signature, authenticated with the impress of the seal of the State of Louisiana, city of Baton Rouge, this thirtieth day of April, A. D. 1897.

Seal of Louisiana.

JOHN T. MICHEL,
Secretary of State.

[Endorsed:] "U," M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

216 List of one hundred and fifty-four (154) names of persons to be summoned to appear before the jury commissioners on Wednesday, January 6th, 1897, at 10 o'clock a. m.

No. 57. Joseph Fabacher, 3513 Prytania.

And in answer to summons issued to him on the 6th day of January, 1897, he reported and was excused, being 72 years old.

I, the undersigned, the president of the board of jury commissioners of the parish of Orleans, State of Louisiana, do hereby certify that the above is a true and correct abstract of the original in the possession of the jury commissioners, as aforesaid, and making part of the archives of there office.

In testimony hereof I have hereunto signed my name on this the 12th day of May, A. D. 1897.

E. O. MELANCON,
Pres't of the Baord of Jury Commissioners for the Parish of Orleans, State of Louisiana.

217 UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that E. O. Melancon is president and member of the board of jury commissioners in and for the parish of Orleans, having been duly appointed, commissioned, and qualified as such, and that full faith and credit are due his official acts in said capacity.

Term of office, four years.
Appointed July 8th, 1896.
Comm'd July 14th, 1896.
Oath filed Aug. 1st, 1896.

Given under my signature, authenticated with the impress of the seal of the State of Louisiana, city of Baton Rouge, this twelfth day of May, A. D. 1897.

Seal of Louisiana.

JOHN T. MICHEL,
Secretary of State.

[Endorsed:] "V," M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

218 UNITED STATES OF AMERICA, }
State of Louisiana, Parish of Orleans. }

[SEAL.]

Officer of the board of health, recorder of births, marriages, and deaths.

Be it remembered that on this day, to wit, the fourth of March, in the year of our Lord one thousand eight hundred and ninety-seven, and the 121 of the Independence of the United States of America, before me, S. R. Olliphant, M. D., president board of health, *ex officio* recorder of births, marriages, and deaths in and for the city of New Orleans and parish of Orleans, personally appeared Henry Thorp, an undertaker, a native of this city, residing corner Julia — Magazine Sts., who hereby declares that Joseph Fabacher (white), a native of Busenberg, Germany, aged 72 years, departed this life yesterday (3 March, 1897), at the Tours infirmary, in this city; cause of death, "strangulation of umbilical hernia."

Certificate of Dr. W. Kohlmann.

Deceased was married; 53 years in city, and resided at No. 1716 Calhoun St.

Birth-place of parents, Germany.

Thus done at New Orleans, in the presence of the aforesaid H. Thorp, as also in that of Messrs. T. H. Lamage, L. B. Gehlbach, of this city, witnesses by me requested so to be, who have hereunto set their hands, together with me, after the reading thereof, the day, month, and year first above written.

(Signed) HY THORP,
T. H. LAMAGE,
L. B. GEHLBACH,
S. R. OLLIPHANT, M. D.,
President Board of Health, ex Officio Recorder.

I do certify the foregoing to be a true and faithful copy from the original recorded in book marked No. 113, folio 313.

In testimony whereof I have set my hand and affixed the seal of my office this twenty-second day of April, in the year one
219 thousand eight hundred and ninety-seven, and the one hundred and 21 of the Independence of the United States of America.

P. HENRY LAMANGE,
Deputy Recorder of Births, Marriages, and Deaths, Parish of Orleans.

220 UNITED STATES OF AMERICA, }
State of Louisiana. }

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that P. Henry Lamange, was at the time of signing the annexed document deputy recorder — births, marriages, & deaths in and for the parish of Orleans, having been duly appointed, commissioned, and qualified as such, and that I verily believe the signature to the attached instrument of writing is his genuine signature, and that said document and attestation is in proper form and by the proper officer.

Seal of Louisiana. Given under my signature, authenticated with the impress of the seal of the State of Louisiana, city of Baton Rouge, this twenty-eighth day of April, A. D. 1897.

JOHN T. MICHEL,
Secretary of State.

[Endorsed:] "W," M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5th, 1898. C. W. Fraser, clerk.

221 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division B.

Succession of JOSEPH FABACHER. No. 52941.

This shall certify to all whom it may concern that on the 30th day of March, in the year of our Lord one thousand eight hundred and ninety-seven, and the one hundred and 21 of the Independence of the United States of America, an application was made to the Honorable Fred D. King, judge of the civil district court for the parish of Orleans, division B, by Mrs. Antoinette Thormann (born Fabacher), praying that she might be appointed administratrix of the succession of Joseph Fabacher.

Now know ye that Mrs. Antoinette Thormann (born Fabacher) has been, and she is hereby, appointed administratrix of the said succession of Joseph Fabacher, and that she has fulfilled all the requisites of the law.

Witness our hand and the seal of the civil district court this 30th day of April, in the year of our Lord one thousand eight hundred and ninety-seven, and in the one hundred and twenty-first of the Independence of the United States.

(Signed) FRED D. KING, *Judge.*
F. E. PETERSON, *Dy Clerk.*

A true copy.
F. E. PETERSON, *Dy Clk.*

[Endorsed:] No. 52941. Civil district court for the parish of Orleans. Succession of Joseph Fabacher. Letters. Filed in circuit court, Waukesha county, Jan. 5th, 1898. C. W. Fraser, clerk.

222 Civil District Court, Parish of Orleans.

Succession of JOSEPH FABACHER. No. 52941.

To the Honorable Fred D. King, judge of the civil district court for the parish of Orleans, division B:

The petition of Mrs. Antoinette Thorman, born Fabacher, wife of Charles W. Thormann, and by her husband herein joined, authorized, and assisted, respectfully shows that the inventory of the property belonging to the succession of Joseph Fabacher, deceased, has been duly taken in conformity to law by Arthur B. Leopold, a notary public of the parish, in obedience to the order of this honorable court, dated March 30, 1897, a duly certified copy whereof is herewith filed and made part hereof, that said inventory should be approved and homologated according to law.

Wherefore petitioner prays that the inventory of the property belonging to this succession taken by Arthur B. Leopold, notary public of this city, on the 5th day of April, 1897, be approved and homologated according to law, and for general relief.

(Signed) E. HOWARD McCALEB,
Att'y for Petitioner.

A true copy.

F. E. PETERSON, *Dy Clk.*
[SEAL.]

Order.

Let the inventory taken by Arthur B. Leopold, not. pub., on the 5th of April, 1897, be approved & homologated as prayed for and according to law.

New Orleans, April 22, A. D. 1897.

(Signed) FRED D. KING, *Judge.*

[Endorsed:] Filed in circuit court, Waukesha county, Jan. 5, 1898. C. W. Fraser, clerk.

223 UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans,
City of New Orleans.

By virtue of and pursuant to an order of the Honorable Fred D. King, judge of the civil district court for the parish of Orleans, division B, bearing date March 30th, 1897, directing that an inventory and appraisement be made by me, the undersigned notary, of all the property and effects situated in this parish and belonging to the succession of Joseph Fabacher, deceased, said order having been rendered upon the petition of Mrs. Antoinette Thormann, born Fabacher, the sole surviving heir and legitimate child of said deceased, Joseph Fabacher, praying to be appointed administratrix in the proceedings entitled Succession of Joseph Fabacher, No. 52941 of the docket of said court, a duly certified copy of which said petition and order of court thereon are hereto annexed for reference—

Be it known that on this fifth day of the month, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States of America the one hundred and twenty-first, I, Arthur B. Leopold, a notary public in and for the parish of Orleans, State of Louisiana aforesaid, duly commissioned and qualified, and assisted by (1st) Bernard Bruen, Esq., attorney-at-law, appointed by said honorable court to represent the absent heirs; (2nd) Messrs. B. Dreifus and G. P. Molloy, the appraisers appointed by said honorable court and duly sworn to faithfully value the property to be inventoried herein, proceeded to No. 1716 Calhoun street, in the 7th district of this city, the residence of Joseph Fabacher, deceased, at the hour of 4.15 o'clock p. m., and then and there requested Mrs. Magdalena Frey, known as the widow of Joseph Fabacher, deceased, to point out to me, notary, the property and effects of said deceased, Joseph Fabacher, for the purpose of taking the inventory of said deceased, in accordance with the order of said honorable court, when after interrogation the said Mrs.
224 Magdalena Frey, known as the widow of Joseph Fabacher, deceased, informed me, notary, that the deceased was not the owner of the furniture, movables, or effects contained in said premises; that the same were owned entirely and exclusively by Mr. Lawrence Fabacher.

Whereupon I, notary, postponed the further taking of said inventory, and notified all the aforesaid parties to meet at my office on Saturday, April 10, 1897, for further taking of said inventory and adjourned the taking of said inventory. Thus done and passed in the city of New Orleans on the day, month, and year herein above written, in the presence of Messrs. E. H. McCaleb, Jr., and Frank L McCaleb, competent witnesses, residing in this parish, who have signed this procès verbal, together with said appraisers, the attorneys representing absent heirs, and me, notary, after due reading of the whole.

(Original signed) BERNARD BRUEN.
B. DREIFUS.
G. P. MOLLOY.
ARTHUR B. LEOPOLD, *Not. Pub.*

Witnesses:
E. H. McCALEB.
FRANK L. McCALEB.

And now, on this 10th day of April, 1897, at the hour of 9 o'clock a. m., in the presence of the aforesaid parties, I, notary, did proceed to the further taking of the inventory of said Joseph Fabacher, deceased, as follows, to wit:

"*Tomb.*"

One marble tomb in lot situated in St. Joseph cemetery, # 2, bearing the inscription, Family of Joseph Fabacher; also two (2) galvanized-iron sofas and five (5) vases, valued by said appraisers at the sum of thirty-five hundred dollars ($3,500.00), and there being

nothing further to be included in this inventory of which I, notary, have been able to inventory, I do now close the same.

In testimony whereof said appraisers, attorn-y for absent heirs, and witnesses, together with me, notary, have signed this
225 inventory on this 10th day of April, A. D. 1897, after reading of the whole.

(Signed) BERNARD BROWN.
" B. DREIFUS.
" G. P. MOLLOY.
" ARTHUR B. LEOPOLD, *Not. Pub.*

Witnesses:
E. H. McCALEB, Jr.
FRANK L. McCALEB.

A true copy.
(Signed) ARTHUR B. LEOPOLD, *Not. Pub.*

[SEAL.]

A true copy.
F. E. PETERSON, *D'y Clerk.*

[Endorsed:] No. 52941. Civil district court, parish of Orleans. Succession of Joseph Fabacher. Filed in circuit court, Waukesha county, Wis., Jan. 5th, 1898. C. W. Fraser, clerk.

226 Civil District Court for the Parish of Orleans, Division B.

Succession of Joseph Fabacher. No. 52941.

Due and public notice having been given, according to law, of the filing of the application of Antoinette Thormann, wife of Charles W. Thorman, for letters of — on this estate; that no opposition has been filed hereto, and that the legal delays for opposing the same having elapsed—

It is therefore ordered that said Antoinette Thormann, wife of Charles W. Thormann, be appointed administratrix of this succession, and that letters as such issue to her on her complying with the requisites of the law.

Judgment rendered and signed April 22nd, 1897.

(Signed) FRED D. KING, *Judge.*

[SEAL.]

A true copy.
F. E. PETERSON, *D'y Cl'k.*

[Endorsed:] Filed in circuit court, Waukesha county, Jan. 5th, 1898. C. W. Fraser, clerk.

227 Civil District Court for the Parish of Orleans, Division B.

Succession of Joseph Fabacher. No. 52941.

P. A. Ducoing, being duly sworn, says that the application of Antoinette Thormann, wife of Charles W. Thormann, praying for

letters of administration on this estate, has been published in the New Orleans Picayune, a newspaper published daily in the city of New Orleans, on the 31 March & 4th–9th of April, 1897, in the English language, and in the New Orleans Bee on the 31 March and 4th, 6th, 7th of April, 1897, in the French language, and that no opposition has been filed thereto.

Sworn to and subscribed before me this 22nd day of April, 1897, and certified correct.

F. E. PETERSON, *Dy Clerk.*

A true copy.
F. E. PETERSON, *Dy Clk.*

[Endorsed:] # 52941. C. D. C. Proof & judgment.

228 (*Notice of Appointment of B. Bruenn, Esq.*)

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division B.

Succession of JOSEPH FABACHER. No. 52941.

To B. Bruenn, Esq., attorney and counselor at law, New Orleans.

SIR: Please to take notice that you have been appointed by this court to represent the absent heirs in the succession of Joseph Fabacher.

New Orleans, March 30th, 1897.

[s.] F. E. PETERSON,
Deputy Clerk.

A true copy.
F. E. PETERSON, *Dy Clk.*

Oath of Appraisers.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division B.

Succession of JOSEPH FABACHER. No. 52941.

Before me, F. E. Peterson, deputy clerk of the civil district court for the parish of Orleans, personally came and appeared B. Dreifus and G. P. Molloy, who solemnly swear that they will well and faithfully perform all and singular the duties of appraisers to value the property to be inventoried in the above-entitled matter.

So help them God.

(Signed) B. DREIFUS.
" G. P. MOLLOY.

New Orleans, March 30th, 1897.

Sworn to and subscribed before me—

(Signed) F. E. PETERSON,
Deputy Clerk.

A true copy.
F. E. PETERSON, *Dy Clk.*

229 (Law stamp) $5.

To the honorable the judges of the civil district court for the parish of Orleans:

The petition of Antoinette Thormann, wife of Charles W. Thormann, residing in this city, and by her husband herein joined, authorized, and assisted, respectfully shows—

That your petitioner's father, Joseph Fabacher, departed this life on the 3rd of March, 1897, aged about 72 years, all of which will more fully and at large appear by a duly certified copy of the certificate of death from the board of health, recorded of births, marriages, and deaths, marked Exhibit "A" and made part hereof.

That the said deceased was at the time of his death and many years before a citizen of Louisiana, domiciled and residing in the city of New Orleans; that said deceased left property in this city and within the jurisdiction of this honorable court.

That your petitioner is the sole surviving heir and legitimate child of said deceased, issue of his marriage with petitioner's mother Mary Frey, which marriage was celebrated at the St. Mary's church in this city, on the 13th of May, 1850.

That your petitioner's mother, Mary Frey, obtained a judgment of divorce against said Joseph Fabacher, deceased, on the 27th day of January, 1874, as will more fully and at large appear from the record and proceeding in the case entitled Mrs. J. Fabacher *vs.* Joseph Fabacher, her husband, No. 5314 of the docket of the late fifth district court for the parish of Orleans, transferred to and numbered No. 44197 of the docket of this court, here referred to and made part hereof.

That they were two children born of said marriage between your petitioner's mother, Mary Frey, and said Joseph Fabacher, deceased, her father, to wit, your petitioner, born on the 31st day of July, 1853, and your petitioner's brother, Andreas Fabacher, who departed this life in this city about ten years ago, leaving no descendents.

That an inventory should be taken of the property and
230 effects belonging unto the succession of said deceased, Joseph Fabacher, appraisers appointed to value the same, and an attorney for absent heirs appointed, contradictorily with whom all proceedings may be carried on.

That your petitioner desires and is entitled to be appointed administratrix of the succession of her deceased father, Joseph Fabacher, and is ready and willing to take the oath and give bond.

Wherefore petitioner prays that an inventory of the property and effects belonging unto the succession of Joseph Fabacher, deceased, be taken by Arthur B. Leopold, a notary public of this parish; that appraisers be appointed to value the same; that an attorney for absent heirs be appointed, and that your petitioner, after due advertisements and delays, be appointed and confirmed administratrix of the succession of her said deceased father, Joseph Fabacher.

And she prays for all general and equitable relief.

(Signed) E. HOWARD McCALEB,
Attorney for Petitioner.

Mrs. Antoinette Thormann, born Fabacher, being duly sworn, deposes and says that all the facts stated in the foregoing petition are true and correct.

(Signed) ANTOINETTE THORMANN.

Sworn to and subscribed before me this 29th day of March, A. D. 1897.

(Signed) ARTHUR B. LEOPOLD,
Notary Public.

(4 Louisiana law stamps) 50.

[Endorsed:] Filed in circuit court, Waukesha county, Wis., Jan. 5th, 1898. C. W. Fraser, clerk.

231 UNITED STATES OF AMERICA, }
State of Louisiana, Parish of New Orleans. }

Office of the board of health, recorder of births, marriages, and deaths.

Be it remembered that on this day, to wit, the fourth of March, in the year of our Lord one thousand eight hundred and ninety-seven, and the 121st of the Independence of the United States of America, before me, S. R. Olliphant, M. D., president board of health and *ex officio* recorder of births, marriages, and deaths in and for the city of New Orleans and parish of Orleans, personally appeared Henry Tharp, an undertaker, a native of this city, residing corner of Julis and Magazi*he* streets, who hereby declares that Joseph Fabacher (white), a native of Busenberg, Germany, aged 72 years, departed this life yesterday (3rd March, 1897), at the Tuoro infirmary, in this city; cause of death, strangulation of umbilical hernia.

Certificate of Dr. W. Kohlmann.

Deceased was married 53 years, in city, and resided at No. 1816 Calhoun St.; birthplace of parents, Germany.

Thus done, at New Orleans, in the presence of the aforesaid H. Tharp, as also in that of P. H. Lanauze and L. B. Geldbach, of this city, witnesses, by me requested so to be, who have hereto set their hands, together with me, after the reading hereof, the day, month, and year first above written.

(Signed) H. THARP.
P. H. LANAUZE.
L. B. GELDBACH.
S. R. OLLIPHANT, M. D.,
President Board of Health and ex Officio Recordere.

I do certify the foregoing to be a true and faithful copy from the original, recorded in book marked No. 113, folio 313.

In testimony whereof I have set my hand and affixed the seal of my office, at the city of New Orleans, this twenty-fourth day of

March, in the year one thousand eight hundred and ninety-seven, and the 121st of the Independence of the United States of America.

(Signed) P. H. LANAUZE,
Deputy Recorder of Births, Marriages, and Deaths, Parish of Orleans.

A true copy.
F. E. PETERSON, *D'y Clk.*

232 Let petitioner's application for letters of administration on this estate be published according to law; let the inventory herein prayed for be made by Arthur B. Leopold, notary public, according to law, and let B. Dreifus and G. P. Lolloy be appointed and sworn as appraisers to value the propertyy to be inventoried, and let B. Bruein, Esq., attorney and counselor at law, be appointed to represent the absent heirs.

New Orleans, March 30th, 1897.

(Signed) FRED D. KING, *Judge.*

A true copy.
F. E. PETERSON, *D'y Clk.*

[Endorsed:] No. 52941. Civil district court, parish of Orleans. Succession of Joseph Fabacher. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

233 UNITED STATES OF AMERICA, }
State of [SEAL.] *Louisiana.* }

Law stamp.

Civil District Court for the Parish of Orleans.

I, Paul O. Guerin, clerk of the civil district court for the parish of Orleans, do hereby certify that the annexed documents are true and correct copies of the originals on file and of record among the archives of my office in the matter entitled Succession of Joseph Fabacher, under number 52941 of the docket of this honorable court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this [SEAL.] 10th day of May, in the year of our Lord one thousand eight hundred and ninety-seven, and in the one hundred and twenty-first year of the Independence of the United States of America.

PAUL O. GUERIN, *Clerk.*

I, F. A. Monroe, presiding judge of the civil district court for the parish of Orleans, do hereb*t* certify that Paul O. Guerin is the clerk of said court; that the same is a court of record, having probate jurisdiction, and that the signature, P-ul O. Guerin, clerk, to the foregoin- certificate is in the proper handwriting of him, the said Paul O. Guerin, clerk; to his official act as such full faith and credit

are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on [SEAL.] the 10th day of May, in the year of our Lord one thousand eight hundred and ninety-seven.

F. A. MONORE, *Judge.*

[Endorsed:] No. 52941. Civil dist. court, parish of Orleans. Succession of Joseph Fabacher. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

I, Paul O. Guerin, clerk of the civil district court for the parish
234 of Orleans, do hereby certify that F. A. Monroe, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same presiding judge of the civil district court for the parish of Orleans, duly appointed and commissiones and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said court this 10th day of May, 1897.

PAUL O. GUERIN, *Clerk.*

[Endorsed:] W[3], M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

235 STATE OF WISCONSIN:

In County Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

By virtue of a commission directed to me and interrogations accompanying the same, all of which are hereto attached, from the clerk of the county court of Waukesha county, Wisconsin, in the above-entitled matter, now pending in said court, I caused to come before me, in the city of Covington, Kenton county, State of Kentucky, the witness Pauline Gross (*née* Troye), named in the attached commission, a resident citizen of the county of Kenton and State of Kentucky, who, being duly sworn by me to speak the truth, the whole truth, and nothing but the truth, in answer to the attached direct and cross interrogatories propounded to her, answered the same as follows, to wit:

Answer to direct interrogatory No. 1:

"My name is now Pauline Gross. My maiden name was Pauline Troye. My age is twenty-six years past. I will be twenty-seven next September. My residence is No. 635 Bakerville street, in the city of Covington, Kenton county, Kentucky. I knew the late Joseph Fabacher. He was my grandfather. I knew him from my earliest recollection until his death."

Answer to direct interrogatory No. 2:

"Joseph Fabacher resided, when I knew him, in New Orleans,

Louisiana; so, for all I can remember, he always resided in that city. My mother was born there in 1853, and he lived there then. He lived there from—Charles Fisk, commissioner—the time I became acquainted with him until he died. He died on Calhoun street, New Orleans, where he had lived about two years. Before moving to Calhoun street he lived for about ten years at No.
236 475 Prytania street, in that city, before which he lived at No. 112 Custom-ho-se street, in that city. I was married in November, 1894, and for four years next before I was married I lived with Joseph Fabacher, my grandfather, in New Orleans, La. I always heard my grandfather speak of New Orleans as his home and of Waukesha just as a summering place. He built a house in Waukesha, which he told me he built simply because it was so much more convenient for him when he was sick than it would be for him at a hotel."

Answer to direct interrogatory No. 3:

"Joseph Fabacher was seventy-three (73) years old when he died. He was born in Buzenburg, Germany. He spoke both English and German languages. He was subject to a physical infirmity—that is, he could not hear as well in the latter part of his life as he could when younger. At times he was quite hard of hearing."

Answer to direct interrogatory No. 4:

"He was proprietor of a restaurant and hotel, when engaged in business, since I first knew him, in New Orleans, La. For some eight or ten years before his death he was out of business. He retired. His place of business was at the corner of Royal and Custom-house streets for several years. I cannot state just how long; possibly fifteen years or more."—Charles Fisk, commissioner.

Answer to direct interrogatory No. 5:

"He was a constant drinker, and sometimes he would get under the influence of liquor. I am able to state that I have seen him on several occasions under the influence of liquor during the past three years. I remember several times he was, while at Waukesha, under such influence, but just how often I cannot state during that time. I remember two occasions within three years last past upon which I saw him under the influence of liquor in New Orleans. One Christmas eve in particular I recall."

237 Answer to direct interrogatory No. 6:

"I lived with Joseph Fabacher for four years prior to my marriage in November, 1894. I was cashier at the restaurant for the nine (9) years next before I was married, during the last four years of which nine I lived with him. During the other five years I saw him almost every day. Sometimes he would go away from home; sometimes to Europe for his health, but when at New Orleans I would see him every day."

Answer to direct interrogatory No. 7:

"While I lived with him the inmates of his house were his wife, five children, and myself. One of these children married while I lived with him. He had one house servant, cook, and house girl, and a boy about the yard and stable to look after horses. I am not able to state the names of the servants. They were changed so

often that I could not attempt to state what servant was working for him at any time. I was away from the residence attending to my duties in the restaurant—Charles Fiske, commissioner—every day, and did not see much of the servants or become much acquainted with them. The last one I remember was a colored woman named Anna. I think 'Anna Davis,' but as to the last name I will not be positive. I saw more of her than of any of the other servants."

Answer to direct interrogatory No. 8:

"I lived with Joseph Fabacher in New Orleans, La., and I visited him at Waukesha, Wis. He generally left New Orleans for Waukesha in the summer, because it was too warm down home in New Orleans for him. The last time he went to Waukesha was in May, I think in 1896. He left Waukesha in 1896, in November. In 1895 he left there in December. In other years he left Waukesha and went back home to New Orleans in October. He was in New
Orleans until he went to Waukesha, and then again after he
238 returned from Waukesha. He always called New Orleans
his home. He never spoke of any other place as his home. Last October I was with him at Waukesha, and the only one who was with him that day. His wife and daughter and servant had gone to Milwaukee, where they always did their shopping, and while they were there he said to me, 'I will tell mamma to get ready to go home next month.' On another occasion he said: 'When I go home I am going to take the children some dolls.' His chief establishment was at New Orleans."

Answer to direct interrogatory No. 9:

"The residence at New Orleans was much better furnished than the one in Waukesha. The home in New Orleans is a new house, and is furnished in the handsomest and most expensive manner throughout. It has been built and furnished since my marriage. The house at Waukesha had in it very ordinary furniture and of the cheapest kind. I should think that the furniture in the house in New Orleans is worth at least a half a dozen times as much as that in the house at Waukesha. I understand that the cost of the home in New Orleans was $17,000.00. I should think that the Waukesha house is not worth much more than one half of the home in New Orleans. There are eight rooms, exclusive of bath-room, in the house at Waukesha, and two halls, upper and lower. There are, I think, exclusive of servants' room, nine main rooms, bath-room, a hall through the house, and large reception-hall room in the house at New Orleans. He had the family pictures at New Orleans. He had a group of the family, and also separate pictures of some of his sons. These were all framed and hung up in the home at New Orleans. He had nothing of this kind at Waukesha."

Answer to direct interrogatory No. 10:

"I cannot state anything in reply to this interrogatory, as I do not know what, if any, household effects, silverware, tableware, bed
or table or other linen his family or my grandfather took to
239 Waukesha or carried away from there."

Answer to direct interrogatory No. 11:

"The friends of Joseph Fabacher resided in New Orleans. Those who knew him the best, the longest, and most intimately lived in New Orleans. All the members of his family, except one son, lived in New Orleans. This son lived at Trilby, La. He had eleven children living in New Orleans; one child, a son, died there. All his children lived in Louisiana. He had one brother in Europe, now at Havre, France, I believe. He had a sister who lived and died in New Orleans. His widow is living in New Orleans. Four of his children were unmarried and resided with him in New Orleans up to the time of his death. Two of them are now with their mother in the home in New Orleans; one of them resides there, but is attending college, and another one makes his home there, but is traveling a great deal. Seven of his children are married and are living in New Orleans. Of these, five are boys and two are girls. The son Joseph at Trilby is married. My mother, now Mrs. Thormann, is named Antoinette, and lives at 924 Desire street; Albert lives at the corner of Gent, Taylor, and Prytania streets; Lawrence lives at the corner of Constantinople and Pitt streets; Peter lives on a corner of the same streets; Anthony lives on Carrol street, near Broad street; Louis lives on Dumainne street, # 534; Barbara, Mrs. Theodore Broderick, lives at the corner of St. Charles Ave. and Fabacher street. John, Aloysius, Lena (Magdalena), and Jacob are unmarried and are the four mentioned by me as living with their mother, widow of Joseph Fabacher, at the home on Calhoun street. Joseph Fabacher had no brother or sister in the United States, so far as I know, living at his death."

Answer to direct interrogatory No. 12:

"Joseph Fabacher belonged to the Roman Catholic Church, and worshipped at the church known as "The Holy Name of Jesus," on St. Charles Ave, near his home. He rented a pew in that
240 church, and I—indeed, I am positive of this. I know he rented a pew in the church of "Our Lady of the Good Counsel," on Louisiana Ave., by the year when he lived on Prytania street, of which congregation he was a memb r during all the time he lived on Prytania street, perhaps as much as ten years. He was a member of the congregation of the church of "The Holy Name of Jesus" from the time he moved onto Calhoun street up to the date of his death. I was a member with him of the congregation of "Our Lady of Good Counsel."

Answer to direct interrogatory No. 13:

"His wife and all his children belonged to the Roman Catholic church. His widow, Lawrence and Peter, and the younger children, John, Aloysius, Lena, and Jacob, belong to what is known as the Jesuit church. The widow and children, John, Aloysius, Lena, and Jacob are me-bers of that congregation meeting at the church named 'The Holy Name of Jesus;' Lawrence and Peter belong to the congregation meeting at the church called 'The Immaculate Conception;' Anthony, to 'The Sacred Heart;' Barbara (Mrs. Theodore Broderick), to 'Our Lady of Good Counsel;' Louis, I think, to the 'Cathedral' or 'St. Mary's church;' my mother (Mrs. Thormann), to 'St. Vincent de Paul.' I do not know the

church membership of Joseph or Albert—that is, the particular congregation."

Answer to direct interrogatory No. 14:

"The minor children of Joseph Fabacher went to the Roman Catholic schools. Lena and Jacob are now under twenty-one years of age. I think Aloysius is also, but he may now be of age. At the time my grandfather died Jacob was at Spring Hill college, and is still there. Last year Lena attended Soule college, in New Orleans. Aloysius was at one time at Spring Hill college, in Mobile, Ala., but was not attending school when grandfather died. I was present when Lena took her first communion, which was in the church of 'Our Lady of Good Counsel.' Joseph Fabacher was not, as I recollect, present. I have no personal knowledge as to
241 the first communion of the other children. Jacob took his first communion in April, 1896, at the 'Immaculate Conception church,' but I was ill at the time and not present. I do not know whether grandfather was then present or not."

Answer to direct interrogatory No. 15:

"Joseph Fabacher had a family tomb at St. Joseph's cemetery, on Washington avenue, New Orleans, La. He was buried at that place and in this family tomb. One grandchild of his, a child of his son Joseph, is also buried there. No other members of the family have died since he had this tomb built, which was in the year 1889."

Answer to direct interrogatory No. 16:

"When Joseph Fabacher built this tomb he said to me at my desk at the restaurant, 'This will be my last home. I want a nice home. I want to be buried in this tomb.' I asked him why he had built it so large. He said it would hold eight persons. He asked me, 'Do you not think I want all my family to be with me?' I have heard him frequently say he wanted to be buried in this tomb. I have heard him say at Waukesha, while he was sick and while I was with him, that he did not want to die at Waukesha."

Answer to direct interrogatory No. 17:

"Dr. Loeber was the family physician of Joseph Fabacher for a number of years. My grandfather had him by the year. He told me that for a long time he paid him $100 per year, but that later, when the family at home had become smaller, he paid him only $75.00. Dr. Loeber lived in New Orleans, at the corner of Euterpe and Colliseum streets. I know that Dr. Loeber attended Joseph Fabacher during his last illness, and that he performed an operation upon my grandfather, but I was not present when my grandfather died. So far as I know, Joseph Fabacher had no physician other than Dr. Loeber, but I think some one assisted him in performing this operation, which was performed at the Tourso infirmary, in New Orleans, Prytania street, just opposite my grandfather's
242 old home. Joseph Fabacher was in poor health a great portion of the time during the last five years of his life."

Answer to direct interrogatory No. 18:

"I can say nothing further, except to say that New Orleans was the home of Joseph Fabacher up to and at the time of his death; that he lived there and that he died there; that he always spoke of

New Orleans as his home; that he said he did not want to die at Waukesha; that he built a tomb in New Orleans, in which he said he wished to be buried and which he called his last home. I have heard his widow at Waukesha say she did not want him to die away from home while he was there in Waukesha; that she would not know what to do, although Lawrence had told her just to wire him at New Orleans if anything should happen. I heard Lena say, at the dentist's in Waukesha, that she would wait until she got home, meaning New Orleans, to have a cap put on her tooth; she had this tooth fixed in New Orleans after she returned home. Mrs. Fabacher stated to me in New Orleans that Dr. Hawkins, of Waukesha, had told her that he did not think Mr. Fabacher would live until she got him home from Waukesha. Every one of the family always spoke of New Orleans as home."

Answer to cross-interrogatory No. 1:

"Antoinette Thormann, the contestant, is my mother."

Answer to cross-interrogatory No. 2:

"Joseph Fabacher built the house at Waukesha, Wis., before he sold out anything in New Orleans and he occupied the house at Waukesha before he sold anything in New Orleans. He took his wife and two of his children the first year he went to Waukesha; these children were Lena and Jacob; he simply went to Waukesha for his health. The next year when he went up to Waukesha he took the same persons with him. Each time he took them all back with him to New Orleans. I think the sale of the property
243 on Prytania street, in New Orleans, took place in the spring of 1895. At any rate, it was after my marriage, which was in November, 1894. I know that Joseph Fabacher did not build the house at Waukesha with the intention of making Waukesha his domicile or with that purpose. As I have already stated, he built that house simply as a convenience. In fact, his wife said she would not go up there with him unless he built a house, as she could not stand the inconvenience of a hotel. I know that Waukesha was not his home or his domicile. That place was but a temporary stopping place to which to go for his health when it became too hot for him in New Orleans. For some years, some three or four, to my recollection, he went to Europe for his health, but when he became older he thought he would try Waukesha instead of taking the trip to Europe and he did so. It was the mineral water which did him good. I know that since Joseph Fabacher built the house at Waukesha he has always claimed New Orleans as his home, has always called New Orleans home, and as late as September, 1896, at Waukesha he said he did not want to die at that place and spoke about going back home in the middle of the next month, and he did, in fact, go back home in November. I should have said as late as October, 1896, which was the time he spoke to me about going back home during the next month, November. I went up to Waukesha in September and mentioned that month by a slip of the tongue instead of October, which was the month in which he made the statement to me which I have given. Mrs. Fabacher and her children were in New Orleans when

Joseph Fabacher died and have lived there all the time since. They returned home to New Orleans with him in November, 1896, and he did not die until March, 1897. He died at his home and was buried in the city of his residence and in the tomb there built by him in which to be buried and which he called his last home. When I speak of his dying at his home I mean in New Orleans. He died at the infirmary in that city, as I have already stated. I know nothing whatever about any distribution by Joseph
244 Fabacher of any property of any kind among any of his children. He sold the restaurant buriness several years ago, and Lawrence was to take into that business with him some of his brothers. This was afterwards done and the business thereafter was carried on by Lawrence & Bros. The building in which the business was carried on was not sold until 1895, when it was sold to Lawrence Fabacher & Bros., and the residence #475 Prytania street was sold to Joseph Fabacher's son-in law, Theodore Broderick, as was also the house and business place now occupied by Theodore Broderick on St. Charles avenue."

And further deponent saith not.

PAULINE GROSS (*Nee* TROYE).

CHARLES FISK,
Commissioner.

245 STATE OF WISCONSIN:

In County Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

To Messrs. Ryan and Merton, attorneys for proponent in the above-entitled matter.

SIRS: Please take notice that the foregoing are direct interrogatories to be propounded to Pauline Gross (*née* Troye), of the city of Covington, county of Kenton and State of Kentucky, under a commission to be issued out of and under the seal of the county court of Waukesha county in the above-entitled matter, which is now pending in said court, and an issue of fact having been joined therein; that you are herewith served with a copy of such interrogatories; that after the expiration of ten days from the date of such service upon you a commission will issue in said action, according to law, to take the deposition of said witness upon such interrogatories and such cross interrogatories as may be filed herein, and that the cause or reason *fro* which said deposition is to be taken is that the said P-uline Gross (*née* Troye) is a necessary and material witness for said contestant on the trial of the above-entitled matter, and that said witness is not a resident of the State of Wisconsin, but resides and now is in the said city of Covington, county of Kenton, State of Kentucky.

Dated at the city of Waukesha, Wis., this 12th day of May, A. D. 1897.

CARNEY, CLASEN & WALSH,
Attorneys for Antoinette Thormann (Nee Fabacher), Contestant.

246 STATE OF WISCONSIN:

In County Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Interrogatories to be administered to Pauline Gross (*née* Troye), of the city of Covington, county of Kenton, and State of Kentucky, witness to be produced, sworn, and examined on the part of the contestant in the above-entitled matter under a commission to be issued out of and under the seal of the county court of Waukesha county and directed to Charles Fisk, Esq., attorney-at-law and notary public, residing in the said city of Covington, county of Kenton, and State of Kentucky, and to such other person as may be named commissioner on the part of the proponent in the above-entitled matter.

First interrogatory. What is your name, age, and residence? Did you know the late Joseph Fabacher? If yes, state how long you knew him.

Second interrogatory. Where did he reside when you knew him? How long has he resided there? You may state all the facts you know concerning his home or domicil.

Third interrogatory. About what aged man was Joseph Fabacher? What place was his nativity? What language or languages did he speak? Was he subject to any physical infirmity of hearing or otherwise?

Fourth interrogatory. What occupation or vocation was Joseph Fabacher engaged in when you knew him? Where? How long?

Fifth interrogatory. What were his habits, sober or otherwise? Have you ever seen him under the influence of liquor during the past three years; if yes, how often?

Sixth interrogatory. How often did you visit the residence of Joseph Fabacher? Where? For what length of time?

247 Seventeenth interrogatory. Who were the inmates of his house? What were the names of his servants? What part of the household duties were assigned to them respectively?

Eighth interrogatory. If in answer to the previous interrogatory you state that you visited the family of Joseph Fabacher in the city of New Orleans, Louisiana, and in the city of Waukesha, Wisconsin, state how long and during what months Joseph Fabacher remained in Waukesha and during what months he lived in the city of New Orleans, Louisiana. Which was his chief establishment? Which place did he call his home?

Ninth interrogatory. Which of the above-named residences was the best furnished? How many rooms did each of these houses contain respectively, and what were their comparative values? In which residence did he have his family portraits or photographs?

Tenth interrogatory. When Joseph Fabacher returned from Waukesha, Wisconsin, to New Orleans, Louisiana, what portion of

his household effects, silverware, tableware, bed and table linen, or other articles did his family bring back with them?

Eleventh interrogatory. State where the friends of Joseph Fabacher, those who had known him longest, best, and most intimately, resided? Where did each of the members of his family in America live? Give their names and their respective relationship to him. State specially the names of his children and their residences.

Twelfth interrogatory. To what church did Joseph Fabacher belong? Where did he worship? State in what church, if any, he rented a pew; whether by the month or by the year. How long was he an attendant and member of the congregation of said church, to your knowledge?

Thirteenth interrogatory. Did any members of his family attend said church? To what church did the members of his family belong? Give its name or names.

Fourteenth interrogatory. To what school, if any, did his minor children go? Where? What are their names? Where did
248 they take their first communion? At what church? Was Joseph Fabacher present at the time?

Fifteenth interrogatory. At what place and where did Joseph Fabacher have his family tomb—in what cemetery? What member or members of his family, if any, are buried therein? Where was he buried?

Sixteenth interrogatory. What desire, if any, did he ever express in your presence as to the place of his burial? How often?

Seventeenth interrogatory. What were the names of the family physicians of Joseph Fabacher? Where did these physicians reside and where did they attend upon him? What was the condition of Joseph Fabacher's health during the past five years prior to his death?

Eighteenth interrogatory. Antoinette Thormann (*née* Fabacher), wife of Charles W. Thormann, in her opposition to the probate of the will of Joseph Fabacher, deceased, claims that said Joseph Fabacher had his home and domicil at the time of his death —. — as if *though* specially interrogated in relation thereto.

[Endorsed:] State of Wisconsin, Waukesha county *county* court. The matter of the probate of the last will and testament of Joseph Fabacher, deceased. Notice for commission, caption, and interrogatories. Due service of a copy — within notice for commission, with caption and direct interrogatories thereto attached, admitted this 12 day of May, A. D. 1897. Ryan and Merton, att'ys for proponent in above-entitled matter. Filed in county court, Waukesha Co., Wis., June 15, 1897. C. W. Fraser, clerk. Filed in circuit court, Waukesha county, Wis., Jan. 5th, 1898. C. W. Fraser, clerk.

249 STATE OF WISCONSIN:

In County Court, Waukesha County.

In the Matter of Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

To Messrs. Carney, Clasen & Walsh, attorneys for Antoinette Thormann, *née* Fabacher, contestant:

Please take notice that the following cross-interrogatories are submitted by the proponent in the above-entitled matter:

In the Matter of the Deposition of PAULINE GROSS, *Née* TROYE, of the City of Covington, State of Kentucky.

First cross-interrogatory. Please state what relation the contestant in this matter, Antoinette Thormann, is to you.

Second cross-interrogatory. Do you not know that Joseph Fabacher in the fall of 1894 or the early spring of 1895 sold his home situate on Prytania street, in the city of New Orleans, Louisiana, and distributed some of his personal effects among some of his children residing in said city of New Orleans, and in the spring of 1895 moved, together with his wife and minor children, to Waukesha, Wisconsin, and there built himself a home, with the intention and purpose of making said Waukesha, Wisconsin, his domicile, and that since said time he has owned no other home or claimed any other domicile that Waukesha, Wisconsin?

RYAN & MERTON,
Attorneys for Proponent.

[Endorsed:] Original. County court, Waukesha Co. In the matter of the probate of last will & testament of Joseph Fabacher, deceased. Cross-interrogatories. Ryan and Merton, att'ys for defendant. Due service of within cross-interrogatories admitted this 14 day of June, A. D. 1897. Carney, Clasen and Walsh, att'ys for contestant. Filed in county court, Waukesha Co., June 15, 1897. C. W. Fraser, clerk.

250 THE STATE OF WISCONSIN, } ss:
Waukesha County, }

County Court.

The State of Wisconsin to Charles Fisk, Esq., of the city of Covington, county of Kenton, and State of Kentucky:

Whereas it appears unto our judge of our county court for Waukesha county, State of Wisconsin, that Pauline Gross, *née* Troye, of the city of Covington, county of Kenton, and State of Kentucky, is a material witness in a certain cause now pending in our said county court, entitled The matter of the probate of the last will and testament of Joseph Fabacher, deceased, and that the personal attendance of said witness cannot be procured at the trial of said cause;

And whereas we, in confidence of your prudence and fidelity, have appointed you, and by these presents do appoint you, Charles Fisk, commissioner to examine the said witness:

Now, therefore, we do authorize and empower you, at a time and place to be fixed by you, diligently to examine the said witness on the interrogatories and cross-interrogatories attached to this commission, on her corporal oath first taken before you, and cause the said examination of such witness to be reduced to writing and signed by such witness and by yourself, and then return the same, annexed to the said commission, unto our county court aforesaid with all convenient speed, enclosed under the seal of you, the said commissioner.

Witness the Honorable M. S. Griswold, judge of the county court of Waukesha county, State of Wisconsin, at the city of Waukesha, county of Waukesha, and State of Wisconsin, this 18th day of June, A. D. 1897.

C. W. FRASER, *Clerk.*

—— ——, *Attorney.*

STATE OF WISCONSIN, *County Court, Waukesha County,* } ss:

I, C. W. Fraser, clerk of said court, do hereby certify that the interrogatories and cross-interrogatories attached and referred to in the within commission are the originals, as the same were filed in my office in the action herein entitled.

Witness my hand and the seal of the county court of Waukesha county, at the city of Waukesha, county of Waukesha, and State of Wisconsin, this 18th day of June, A. D. 1897.

Seal County Court.

C. W. FRASER, *Clerk.*

Rules of the County Court, Waukesha County, Wisconsin, Relating to the Mode of Executing Commissions.

SECTION 4115, R. S. 1878. The commissioner named in the direct interrogatories shall fix the time and place for executing the commission, and give the other commissioner, if any, one day's notice thereof, when he resides in the same place, and when not one day's notice in addition for every thirty miles of distance between the place of his residence and the place fixed for executing the commission. If the notice be by mail, double time shall be allowed; but notice may be waived in writing or by appearance at the execution of the commission. If there be two commissioners, the place for executing the commission shall be fixed in the county where they reside, unless they agree upon another. The commissioner named in the direct interrogatories shall have charge of and return the depositions.

RULE XVIII, SEC. 4. On the receipt of the commission by the commissioner named in the direct interrogatories, he shall fix a

time and place for executing it, and notify the other commissioner, if any there be, under the provisions of section 4115 of the Revised Statutes, unless such notice be waived in writing or by his appearance at the execution of the commission. At the time and place so fixed the commissioner or commissioners shall proceed to execute such commission in accordance with said section 4115, and sections 4, 5 and 6 of this rule, copies whereof shall be transmitted with the commission for their instruction. If either of the commissioners shall not attend at the time and place so fixed, the other may proceed to execute the same with like effect as if both were present; but he must certify in his return that the commissioner so absent had due notice of the time and place of executing the same, and that he failed to attend pursuant thereto.

SEC. 5. The commissioner or commissioners shall proceed to execute the same as follows: The commissioners, or one of them, shall publicly administer an oath to each witness named in the commission, that the answers which he shall make to each of the interrogatories propounded to him shall be the truth, the whole truth, and nothing but the truth. Each interrogatory, direct and cross, shall be propounded to him, and his answer thereto be correctly reduced to writing, and with any exhibit thereto be annexed to and returned with the commission. Each witness shall subscribe his name at the end of his answers to the interrogatories, and the commissioner or commissioners shall subscribe his or their names at the foot of each page of the testimony. If any exhibit is produced and proved or referred to in the answer of any witness, it shall be marked as an exhibit by some convenient designation, either by letter or number, by the commissioners, or one of them, and be referred to in the testimony of the witness, and shall be annexed to and returned with the deposition. If the paper be a record or other document not in the control of the party or the commissioner, it shall be sufficient to annex a copy, stated by the witness in his answers to be a true copy thereof. The commissioner or commissioners shall certify in their return that each witness was duly sworn or affirmed before giving his evidence, and shall also state the time when the testimony was taken. The return of the commissioner or commissioners shall be endorsed on the commission.

SEC. 6. When the answers to all the interrogatories and exhibits thereto, if any, shall have been so signed and annexed to the commission upon which the return shall be indorsed, the proper commissioner shall enclose the same in a suitable envelope, which shall be properly sealed, and direct the same to the clerk of the court from which the commission issued, at his place of office, with the title of the action endorsed thereon, and the package shall be immediately transmitted to him by mail or express.

[Endorsed:] County court, Waukesha county. In the matter of the probate of the last will and testament of Joseph Fabacher, deceased. Commission with return. Ex. X, M. G., rep. Filed in probate this 28th day of June, 1897. M. S. Griswold, Co. judge.

STATE OF KENTUCKY, } ss:
Kenton County, }

I, Charles Fisk, the commissioner named in the within and foregoing commission, do hereby certify and return to the within-named court that after the coming of the said commission to me I took the deposition of the witness within named in the manner described in the caption and several certificates accompanying said deposition and signed by me and herewith returned; that the said witness before giving her testimony was duly and publicly sworn by me to testify the truth, the whole tr*p*uth, and nothing but the truth before giving her testimony, in answer to each of the interrogatories and cross-interrogatories put to her, and that the said deposition was taken at my office, in the city of Covington, in the county of Kenton, State of Kentucky, on the twenty-eighth day of June, A. D. 1897, and concluded on the twenty-eighth day of June, A. D. 1897.

CHARLES FISK,
Commissioner.

Fees for executing this commission, $15.00.

251 STATE OF ILLINOIS, } ss:
County of Cook, }

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Testimony taken before A. L. Crow, a notary public in and for the county of Cook and State of Illinois, on the 14th day of July, A. D. 1897, at the hour of 2:30 p. m., at the office of the Leland hotel, at the corner of Michigan avenue and Jackson street, Illinois, as per stipulations herewith attached.

Appearances: E. Howard McCaleb, Esq., James J. Hoch, Esq., on behalf of the contestant; Ryan & Merton, on behalf of the executor.

252 WILLIAM C. KEELEY, called as a witness on behalf of the contestant, having been duly sworn, testified as follows:

Direct examination by Mr. MCCALEB:

Q. What is your name?
A. William C. Keeley.
Q. Where do you reside, and in what business are you engaged?
A. Reside in Chicago, and am clerk in Leland hotel.
Q. How long have you been clerk of the Leland hotel?
A. Have been clerk since the 20th of March, 1892.
Q. Did you know the late Joseph Fabacher?
A. I knew him as a guest of the Leland; yes.
Q. In what capacity were you employed, and where, in December, 1895?
A. I was chief clerk for the Leland hotel; in same position that I am now in.

Q. Is there a book called the register kept at the Leland hotel, and was such a register kept in 1895 and since?

A. Yes, sir.

Q. What does this register contain?

A. It contains the arrivals of all the guests of the hotel and the time of arrival, with date.

Q. Who writes the names in this register?

A. The guests as they arrive.

Q. What else do the guests do besides write their names?

A. Write their residence.

Q. Look at your register of the Leland hotel, of Chicago, of December 5th, 1895, and state whether or not you find the name of Joseph Fabacher on that register.

253 A. I find Joseph Fabacher, Mrs. Fabacher, and L. Fabacher; residence, New Orleans, La. They arrived at dinner, December 5th, 1895, Thursday.

Q. In whose handwriting is the name Joseph Fabacher, appearing on the register of the Leland hotel December 5th, 1895?

A. In Mr. Joseph Fabacher's own handwriting.

Q. How do you know that fact?

A. Because I was the one that room- him. He registered and I assigned him to the room.

Q. Is Mrs. Fabacher and L. Fabacher likewise in his handwriting?

A. Yes; all in same handwriting.

Q. Did you see him when he wrote in that register of that date?

A. I di-; yes, sir.

Mr. McCaleb: I offer in evidence the register of the Leland hotel of December 5th, 1895.

Q. Where was you employed on the 10th day of May, 1896, and in what capacity?

—. I was employed at the Leland hotel, as chief clerk.

Q. Was there a register of the arrivals kept on that date in the registry book of the Leland hotel?

A. There was.

Q. Look on that date and see if you find the name of Joseph Fabacher.

A. Joseph Fabacher and family, New Orleans, La.; registered May 10th, lunch-time.

Q. In whose handwriting is the name Joseph Fabacher and family, New Orleans, La., appearing on the register of the Leland hotel Sunday, May 10th, 1896?

A. Mr. Fabacher's handwriting.

254 Q. How do you know that fact?

A. Because I assigned him rooms and saw him write it.

Mr. McCaleb: I offer the register of the Leland hotel of May 10th, 1896, in evidence.

Q. Did Mr. Fabacher ever tell you where his home was and where he resided?

A. No.

Cross-examination by Mr. RYAN:

Q. Mr. Keeley, was the residence, New Orleans, La., that appears at the right of the name of Joseph Fabacher on your register of 1895 in the handwriting of Joseph Fabacher?

A. To the best of my knowledge, it is; it has never been changed since it was written.

Q. Do you know this?

A. I am positive it is his.

Q. In your judgment, is that the same writing?

A. Yes, sir.

Q. Think that is the same?

—. It has never been changed since that day. I know that he registered because I assigned him to rooms and sent him there. I suppose that all of it was written by Mr. Fabacher, and I am sure that it is none of my own writing. It appears to be in his handwriting.

Q. Would you swear to it?

A. Swear to it as far as registering, and state that he had done the other at the same time as he registered.

Q. You would swear to it as far as it is Fabacher's writing?

A. Just the same.

Q. You don't undertake to remember the fact of ev-ry guest that registers?

A. Well, no; not every guest.

255 Q. And you don't recall positively the time that Mr. Fabacher wrote his name, together with the name of his wife, and, I think, that of his daughter on the register?

A. I remember Mr. Fabacher registered and the rooms he took.

Q. You assigned him to rooms?

A. Yes, sir.

Q. Did you know him?

A. Knew that he was a guest here. I had known him as a guest here for quite a while.

Q. You say he wrote this also?

A. Wrote that also.

(Mr. Ryan was the- pointing to the register of 1896 and also to the register of 1895.)

Mr. RYAN: In '95 he was on his way to New Orleans, but at which time was he here?

A. I do not know his destination. I don't know what way he was going.

Q. In May, 1896, do you know where he was going?

A. No; I don't.

On the register of December 5th, 1895, the witness states there is no doubt about the signature. The registration is always by the guest and never by an office employee.

Q. You are not positive about that? Some other person might have written it without your knowing. Perhaps the night clerk wrote it. Is it possible?

A. It is hardly probable.

Q. I am asking if it is possible.

A. I am in charge of the books, and no one else in the room, and would my cashier come to the front and write any such name as that?

Witness ststes that Fabacher had a colored boy in May, 1896, and family of five. The colored boy looked after him and was his valet.

256 It is stipulated between the counsel of the respective parties that this dposition is taken subject to the *smae* stipulation under which all the other depositions have been taknen.

WILLIAM C. KEELEY.

Subscribed and sworn to before me this 15th day of July, A. D. 1897.

A. L. CROW,
Notary Public.

[NOTARIAL SEAL.]

257 STATE OF ILLINOIS, } ss:
County of Cook, }

I, A. L. Crow, a notary public in and for said county, do hereby certify that the above deposition was taken before me at the office of the Leland hotel, in the city of Chicago, in said county, on the 14th day of July, A. D. 1897, at 2.30 p. m., as per stipulation; that it was taken, at the request of the contestant herein, upon verbal interrogatories, and that it was reduced to writing by myself; that it was to be taken to be used upon the trial in the matter of the probate of the last will and testament of Joseph Fabacher, deceased, now pending in the county court in and for Waukesha county, State of Wisconsin, and that said deposition was taken in pursuance of and by virtue of the annexed stipulation; that said deponent, before examination, was sworn to testify the truth, the whole truth, and nothing but the truth relative to said cause, and that said deposition was carefully read by him and subscribed to by him in my presence.

A. L. CROW,
Notary Public, Cook County, Illinois.

[SEAL.]

258 STATE OF ILLINOIS, } ss:
Cook County, }

I, Philip Knopf, county clerk and clerk of the county court of Cook county, the same being a court of record, do hereby certify that A. L. Crow, Esq., whose name is subscribed to the certificate to the annexed deposition, was at the time of signing the same a notary public in and for Cook county, duly commissioned, sworn, and acting as such, and authorized to administer oaths and take depositions; that I am well acquainted with his handwriting and verily believe that the signature to said certificate is genuine.

In testimony whereof I have hereunto set my hand and affixed

the seal of said court, at the city of Chicago, in said county, this 15th day of July, 1897.

[SEAL.] PHILIP KNOPF, *Clerk.*

259 STATE OF WISCONSIN:

In County Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

It is hereby stipulated and agreed by and between the counsel representing the respective parties hereto that the time and place of taking the deposition of W. Keeley be changed from July 15th, 1897, at 10 o'clock a. m., to July 14th, 1897, at 2.30 p. m., and the place be changed from room 315 Ashland block, in the city of Chicago, Illinois, to the office of the Leland hotel, at the corner of Michigan avenue and Jackson street, Chicago, Illinois.

Dated Chicago, Ill., this 14th day of July, A. D. 1897.

CARNEY, CLASEN & WALSH,
By J. J. HOCH,
Attorneys for Antoinette Thormann (Née Fabacher), Contestant.
RYAN & MERTON,
Attorneys for Proponents.

260 STATE OF WISCONSIN:

In County Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

It is hereby stipulated and agreed by and between the proponents and contestant in the above-entitled matter, by their respective attorneys hereto, that the deposition of W. Keeley, residing in the city of Chicago, State of Illinois, and the depositions of any other persons residing at that place, be taken on behalf of said contestant, to be used in the trial of the above-entitled matter and in all subsequent proceedings therein, before A. L. Crow, a notary public in and for said State of Illinois, at his office, at room 315 Ashland block, in said city of Chicago, Illinois, on the 15th day of July, A. D. 1897, at ten o'clock a. m., without further notice or objection, subject, however, to all such objections that may be raised by either party thereto as to the competency, relevancy, and immateriality of the testimony therein contained.

Dated Waukesha, Wis., this 8th day of July, A. D. 1897.

CARNEY, CLASEN & WALSH,
Attorneys for Antoinette Thormann (Née Fabacher), Contestant.
RYAN & MERTON,
Attorneys for Proponents.

[Endorsed:] In the matter of the probate of the last will and testament of Jos. Fabacher, dec'd. Deposition of William C. Keeley. Ex. Z, M. G., rep. Filed in probate this 17th day of July, 1897. M. S. Griswold, Co. judge.

261 $3,500.00. NEW ORLEANS, *June* 11, 1895.

One year after date I promise to pay to the order of myself thirty-five hundred $\frac{00}{100}$ dollars, with interest, at the rate of five per cent. per annum, from date until paid.

Value received.

Due —. THEO. BRODERICK.

Endorsements: Jeff. C. Wenck, successor to John Bendernagel, notary public, 31 Carondelet street, New Orleans. "*Ne varietur.*" For identification with an act passed before me this day. New Orleans, June 11th, 1895. Jeff. C. Wenck, not. pub.

[Endorsed:] Theo. Broderick. Ex. 7, J. H. S., rep.

262 $3,500.00. NEW ORLEANS, *June 11th*, 1895.

Two years after date I promise to pay to the order of myself thirty-five hundred $\frac{00}{100}$ dollars, with interest, at the rate of five per cent. per annum, from date until paid.

At New *New* Orleans, La.

Value received.

Due —. THEO. BRODERICK.

Endorsements: Jeff. C. Wenck, successor to John Bendernagel, notary public, 31 Carondelet street, New Orleans. "*Ne varietur.*" For identification with an act passed before me this day. New Orleans, June 11th, 1895. Jeff. C. Wenck, not. pub.

[Endorsed:] Theo. Broderick. Ex. 8, J. H. S., rep.

263 $2,000.00. CROWLEY, *Jan. 7th*, 1896.

Received from Joseph Fabacher the sum of two thousand dollars, to be deducted from his estate as part of my *pro rata*, without interest.

$2,000.00. JOSEPH H. FABACHER.

Witness:

LAWRENCE FABACHER.

[Endorsed:] Ex. 9, J. H. S., rep.

264 $3,000. NEW ORLEANS, *June 12th*, 1895.

On demand after date I promise to pay to the order of myself three thousand $\frac{00}{100}$ dollars, with interest, at — per cent. per annum.

At ——.

Value received.

No. —. Due —. THEO. BRODERICK.

[Endorsed:] Theo. Broderick. Ex. 10, J. H. S., rep.

265 No. 1.

Copy of Joseph Fabacher'- Ac. with Waukesha Nat'l Bank.

Date.	Check.	Deposit.	Balance.	Overdraft.
Oct. 3, '93		1,100	1,100	
9,	90		1,010	
30,	1,001.60		8.40	
Nov. 20,		800	808.40	
25,	800		8.40	
Dec. 1,		5	13.40	
30,	13.60			.20
M'ch 12, '94		1,000	999.80	
Ap'l 9,		1,001	2,000.80	
May 4,	800		1,200.80	
5,	9.20		1,191.60	
June 16,		1,000	2,191.60	
19,		250	2,441.60	
29,	50		2,391.60	
30,	800		1,591.60	
July 2,	25		1,566.60	
3,	190		1,376.60	
6,		100	1,476.60	
7,	300		1,176.60	
10,	50		1,126.60	
12,	14.50		1,112.10	
13,	150		962.10	
17,	100		862.10	
21,	100		763.10	
23,	250		512.10	
28,	50		462.10	
Aug. 3,	50		412.10	
6,	180		232.10	
266				
Aug. 7,	50		182.10	
10,	40		142.10	
11,	50		92.10	
13,		600	692.10	
18,	175		517.10	
21,	150		367.10	
25,	67.75		299.35	
27,	200		99.35	
Sept. 5,	50		49.35	
7,	31.20		18.15	
11,		499.50	517.65	
"	58		459.65	
19,	76		383.65	

Copy of Joseph Fabacher'- Ac. with Waukesha Nat'l Bank—Continued.

Date.	Check.	Deposit.	Balance.	Overdraft.
20,	50		333.65	
22,	50		283.65	
24,	335			51.35
Oct. 3,		100	48.65	
13,	10		38.65	
Jan'y 3, '95	17.07		21.58	
June 7,	15		6.58	
15,		4,500	4,506.58	
29,	100		4,406.58	
July 2,	39.07		4,367.51	
6,	100		4,267.51	
10,	50		4,217.51	
13,	100		4,117.51	
15,	135		3,982.51	
22,	20.87		3,961.64	
23,	178.20		3,783.44	
31,	100		3,683.44	
Aug. 10,	103		3,580.44	
12,	42.50		3,537.94	
267				
Aug. 13,	150		3,387.94	
16,	57.50		3,330.44	
17,	50		3,280.44	
24,	100		3,180.44	
29,	100		3,080.44	
31,	44.45		3,035.99	
Sept. 5,	100		2,935.99	
9,	25		2,910.99	
11,	100		2,810.99	
16,	150		2,660.99	
23,	300		2,360.99	
26,	40		2,320.99	
Oct. 1,	142		2,178.99	
2,	50		2,128.99	
4,	195		1,933.99	
5,	30.50		1,903.49	
10,	100		1,803.49	
21,	50		1,753.49	
26,	100		1,653.49	
31,	64		1,589.49	
Nov. 12,	100		1,489.49	
22,	50		1,439.49	
30,	100		1,339.49	
Dec. 4,	346.75		992.74	

Copy of Joseph Fabacher's Ac. with Waukesha Nat'l Bank—Continued.

Date.	Check.	Deposit.	Balance.	Overdraft.
21,	24.57		968.17	
M'ch 23, '96	100		868.17	
May 12,		1,150	2,018.17	
21,	100		1,918.17	
June 1,	100		1,818.17	
6,	50		1,768.17	
13,	50		1,718.17	
20,	50		1,668.17	
268				
June 22,	91.40		1,576.77	
27,	50		1,526.77	
July 6,	50		1,476.77	
14,	50		1,426.77	
22,	100		1,326.77	
Aug. 3,	100		1,226.77	
15,	100		1,126.77	
25,	100		1,026.77	
Sept. 8,	100		926.77	
21,	100		826.77	
Oct. 7,	100		726.77	
27,	75		651.77	
28,	100		551.77	
Nov. 9,	100		451.77	
16,	103		348.77	
17,	200		148.77	
Dec. 15,	16		132.77	
Jan. 7, '97	51.21		81.56	
9,		10	91.56	
May 14,		26.28	117.84	

[Endorsed:] Ex. 11, J. H. S., rep.

269 NEW ORLEANS, *May 4th*, 1895.

This is to certify that Joseph A. Phiesy and Bros. hereby agree to repair the double cottage house on Desne near Rampart St. for Mr. Joseph Fabacher according to specifications furnished by us, the undersigned carpenters and contractors, for the sum of five hundred and twenty-five dollars ($525.00).

(Signed) JOS. A. PHIESY AND BROS.
JOSEPH FABACHER, *As Owner.*

[Endorsed:] Ex. O O., M. G., rep.—Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

270 No. —.

Jos. D. Taylor, notary public and commissioner—new No., 128 Carondelet St. (old No., 8)—official notary of the city of New Orleans.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans,
Parish of Orleans.

Be it known, that on this twenty-first day of the month of November, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America, the one hundred and nineteenth, before me, Joseph Dewey Taylor, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared: Mr. Joseph Fabacher, of full age and a resident of this parish, who declared, that for the consideration and on the terms and conditions hereinafter set forth, he does, by these presents, grant, bargain, sell, convey, transfer, assign and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations or other incumbrances whatsoever, unto Mr. Lawrence Fabacher, also of full age and a resident of this parish, here present, accepting and purchasing for himself, his heirs and assigns and acknowledging delivery and possession thereof, the following-described property, to wit:

First. A certain lot of ground together with the buildings and improvements thereon and all rights, ways, privileges and servitudes thereunto belonging or in anywise appertaining, situated in
271 the second district of this city, in the square bounded by Royal Custom-house, Canal and Bourbon streets, and designated by the No. five, on a plan deposited in the office of H. B. Cenas, late a notary public in this city and marked by him *Ne varietur* May 1st, 1847. Said lot measuring in American measure, twenty-four feet, three inches front on Royal street, by a depth between parallel lines, of fifty-nine feet eight inches, the said premises being designated as No. 23, Royal street.

Being the same property which the present vendor acquired by purchase from the succession of Mrs. Eliza Vance, deceased by act passed before Samuel Flower, a notary public in this city, dated the 3rd day of May A. D. 1883, title registered in the conveyance office in this city, in Book 116 folio 784, and

Second. A certain lot or portion of ground together with the buildings and improvements thereon, and the rights, ways, privileges, servitudes and advantages thereunto appertaining and belonging, situate in the second district of this city, in the square bounded by Custom-house, Royal, Bourbon and Canal streets, and measuring, according to a plan drawn by C. A. De Armas, surveyor, dated 18th December, 1865, deposited in the office of M. Gernon, a notary public in this city, fifty-four feet, six inches front on Custom-house street, by a depth of ninety-five feet eight inches, between parallel lines,

Being the same property which the present vendor acquired by purchase from Thomas H. Sampson, and Calvin P. Sampson, by an act passed before John Bendernagel, late a notary public in this city, dated the fourteenth day of April A. D. eighteen hundred and eighty-four, title registered in the conveyance office, in this city, in Book 119 folio 370.

To have and to hold the said property and appurtenances unto the said purchaser, his heirs and assigns forever.

And the said vendor hereby binds himself and his heirs forever to warrant and defend the property herein conveyed, against all
272 legal claims and demands whatever.

The said vendor moreover tra*b*sfers unto said purchaser all the rights and actions of warranty to which he is or may be entitled, against the former owner or owners of the property herein conveyed subrogating said purchaser to the said rights and actions to be by him enjoyed and exercised in the same manner as they might have been by the said vendor.

This sale is made and accepted for and in consideration of the price and sum of fifty thousand (50,000) dollars, cash, current money, paid by the said purchaser at the execution of these presents and in the presence of the undersigned notary and witnesses to the said vendor who hereby acknowledges the receipt thereof and grants full acquittance and discharge therefor.

According to the annexed certificates of the register of conveyances and recorder of mortgages in and for the parish, it will be seen that the present vendor has not alienated the herein-conveyed property and the same is free from all mortgages or other encumbrances in his name.

Said vendor declared, that all taxes due and exigible on the property herein conveyed, including the city taxes for the year 1894, and as regards the State tax of 1894, the purchaser assumes payment thereof.

Thus done and passed in my office in the city of New Orleans, aforesaid, the day, month and year first aforesaid, in the presence of Charles G. Rebentisch, and Alphonse J. Cuneo, witnesses of lawful age, residing in this parish, who have signed their names with the said parties, and me, notary, after due reading of the whole.

(Original signed) JOSEPH FABACHER.
LAWRENCE FABACHER.
C. G. REBENTISCH.
ALPHONSE J. CUNEO.
J. D. TAYLOR, *Not. Pub.*

A true copy of the original.
New Orleans, May 10th, 1897.
[SEAL.] J. D. TAYLOR, *Not. Pub.*

[Endorsed:] Ex. P P, M. G., rep. New Orleans, Nov. 21st, 1894. (Copy.) Sale of property by Jos. Fabacher to L. Fabacher. Registered in C. O. Book 155, folio 60. Joseph D. Taylor, notary public and official notary of the city of New Orleans, No. 8 Carondelet St. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

273 STATE OF LOUISIANA, }
Parish of Orleans, City of New Orleans. }

Act of Procuration.

Joseph Fabacher
to
Laurence Fabacher. } No. 209.

MAY 23RD, 1887.

Be it known, that on this twenty-third day of May, in the year one thousand eight hundred and eighty-seven before me, John Bendenagel, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared, Joseph Fabacher of this city who declared that he had made and appointed and by these presents does make, constitute and appoint as his agent and attorney-in-fact. Laurence Fabacher, also of this city, to transact, manage and conduct all and singular his affairs, business and concerns, connected with and appertaining to his restaurant and other business, to demand, collect and receive of and from all persons whomsoever all moneys, goods and debts due, owing, coming to and belonging to him, and upon recovery and receipt in the premises, to give due and full acquittance and discharges; to appear before all courts of law and equity there to do prosecute and defend as occasion shall or may require to make deposits and draw all moneys out of bank by check or otherwise; to borrow not exceeding the sum of two thousand dollars should it be necessary to do so in transacting the business of said restaurant and generally to do and perform all and whatever may be requisite and necessary in the premises, said constituent binding himself to ratify and confirm all and whatsoever said attorney shall lawfully do or cause to be done in virtue hereof.

Thus done and passed in my notarial office at New Orleans, aforesaid, in presence of Ferdinand J. Aliez and Jefferson C.
274 Wenck competent witnesses residing in this city who hereunto subscribed their names with said parties and me notary on the day and date above written.

(Signed) JOSEPH FABACHER.

(Signed) J. C. WENCK.
F. J. ALIEZ.
(Signed) JOHN BENDERNAGEL, *Not. Pub.*

The undersigned, Peter Stift, custodian of notarial records, do hereby certify that the above and foregoing is a true and correct copy of the original on file and of record in my office.

New Orleans, Nov. 28, 1897.

[SEAL.] PETER STIFT,
Custodian of Notarial Records.

275 UNITED STATES OF AMERICA,
State of Louisiana.

I, the undersigned, secretary of state of the State of Louisiana, do hereby certify that Peter Stift, whose signature is subscribed to the annexed instrument of writing, was at the time of signing the same custodian of notarial records in and for the parish of Orleans, State of Louisiana, having been duly appointed, commissioned, and qualified and authorized to act in said capacity; that his signature to said instrument of writing is genuine, as I verily believe; that his attestation is in due form of law and by the proper officer; that full faith and credit are and ought to be given to all of his official acts as such custodian in and out of this State.

Seal of Louisiana.

Given under my signature, authenticated with the impress of the seal of the State of Louisiana, city of Baton Rouge, this twenty-ninth day of December, A. D. 1897.

JOHN T. MICHEL,
Secretary of State.

[Endorsed:] Ex. 2, J. H. T., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

276 UNITED STATES OF AMERICA,
State of Louisiana.

Civil District Court for the Parish of Orleans.

I, Paul O. Guerin, clerk of the civil district court for the parish of Orleans, do hereby certify that at a session of the late sixth district court of New Orleans, holden in the city of New Orleans, on Saturday, the 24th day of March, in the year of our Lord one thousand eight hundred and fifty-five, among others, the following entry was made on the minutes of said court, to wit:

This day personally came and appeared in open court Joseph Fabacher, an alien and subject of the King of Bavaria, and made application to be admitted a citizen of the United States of America, and in support of his said application he produced to the court (in pursuance of the direction of the act of Congress of the United States of America entitled "An act to establish a uniform rule of naturalization, and to repeal the acts heretofore passed on the subject," passed fourteenth of April, 1802, and to the directions of the acts of said Congress subsequently passed on that subject) the record in this court of declaration under oath of Louis Seibert and Fridolin Myhers, both citizens of the United States of America, that the said Joseph Fabacher has continually resided within the limits and jurisdiction of the United States of America for more than five years last past, and having proved to the satisfaction of this court that he made his declaration of intention to become a citizen of the United States of America on the 18th day of October, 1852;

And it further appearing to the court, upon the testimony afore-

said, that he has resided for one year at least within the State of Louisiana; that during the whole of s-id time he has behaved himself as a man of good moral character, attached to the principles of the Constitution of the United States of America and well disposed to the good order and happiness of the same; and it appear-
277 ing to the satisfaction of the court that the said Joseph Fabacher has in all respects fulfilled the requisites and is entitled to the benefit of the said act of Congress, and the said Joseph Fabacher having made oath of record in this court that he will support the Constitution of the United States of America, and that he doth absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, State, or sovereignty whatever, and particularly to the King of Bavaria, of whom he was a subject, it was thereupon considered by the court that the said Joseph Fabacher be admitted, and he was accordingly admitted, by the said court to be a citizen of the United States of America.

(Signed) [SEAL.] J. B. COTTON, *Judge.*

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on
[SEAL.] this 29th day of April, A. D. 1897, and the 121st year of the Independence of the United States of America.

PAUL O. GUERIN, *Clerk.*

I, F. A. Monroe, judge of the civil district court for the parish of Orleans, do hereby certify that Paul O. Guerin is clerk of said court; that the same is a court of record, having common-law jurisdiction; that the court is composed of five judges, and that the signature, Paul O. Guerin, to the foregoing certificate is in the proper handwriting of him, the said Paul O. Guerin, clerk; to his official acts as such full faith and credit *redit* are due and owing, and I do further certify that this attestation is in due form of law.

Given under my hand and seal, at the city of New Orleans,
278 on this twenty-ninth day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

[SEAL.] F. A. MONROE, *Judge.*

$1.50 law stamp.

279 UNITED STATES OF AMERICA, }
State of [SEAL.] *Louisiana.* }

Civil District Cour- for the Parish of Orleans.

I, Paul O. Guerin, clerk of the civil district court for the parish of Orleans, do hereby certify that the annexed document is a true and correct copy of the original on file and of record among the archives of my office in the matter entitled naturalization of Joseph Fabacher, under No. 53284 of the docket of this honorable court, transferred from the late sixth district court of New Orleans.

In testimony whereof I have hereunto set my hand and affixed

the seal of the said court, at the city of New Orleans, on the 29th day of April, in the year of our Lord one thousand
[SEAL.] eight hundred and ninety-seven, and in the 121st year of the Independence of the United States of America.

PAUL O. GUERIN, *Clerk.*

I, F. A. Monroe, presiding judge of the civil district court for the parish of Orleans, do hereby certify that Paul O. Guerin is the clerk of said court; that the same is a court of record, having probat- jurisdiction, and the signature, Paul O. Guerin, clerk, to the foregoing certificate is in the proper handwriting of him, the said Paul O. Guerin, clerk; to his official act- as such full faith and credit are due and owing, and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on the 29th day of April, in the year of our Lord one thousand eight
[SEAL.] hundred and ninety-seven.

F. A. MONROE, *Judge.*

I, Paul O. Guerin, clerk of the civil district court for the
280 parish of Orleans, do hereby certify that F. A. Monroe, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same presiding judge of the civil district court for the parish of Orleans, duly appointed and commissioned as such, and that said attestation is in due form of law.

Witness my hand and the seal of said court this 29th day of April, 1897.

[SEAL.] PAUL O. GUERIN, *Clerk.*

[Endorsed:] Ex-ib. "A," M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

281 *Petition.*

Filed Jan. 12, 1874. Paul T. Abodie, d'y cl'k.

To the honorable the judge of the fifth district court, parish of Orleans:

The petition of Mrs. J. Fabacher, a resident of this parish, respectfully represents that she intermarried with Joseph Fabacher in the month of November, 1849; that since that time she conducted herself as a dutiful and faithful wife in every respect towards her said husband; that *they* are two issues from said marriage, to wit, Antoinetta, aged 20 years, who is now the wife of Mathias Droye, and Andreas, aged about 18 years.

Petitioner further represents that her said husband, forgetful of his matrimonial vows, is living and has been living in open concubinage with Magdalena Frey for more than ten years; that she is entitled to a divorce *a vinculo matrimonii.*

Wherefore petitioner *pays* that she be authorized to institute and prosecute this suit; that her said husband, Joseph Fabacher, be duly cited; that after due proceedings there be judgment in favor

of petitioner and against her husband, defendant, decreeing that the bonds of matrimony, which has heretofore existed between petitioner and defendant, Joseph Fabacher, be forever dissolved and a divorce *a vinculo matrimonii* granted; that she be authorized during the pendency of this suit —, at the corner of Craps and Port streets, at the domicile of her son-in-law; that the guardianship of her minor son, Andreas, be left to petitioner, and that defendant be condemned to pay all costs of suit; for further aid and general relief; and as in duty bound, etc.

(Signed) WENCK & HUFT, *Att'ys.*

(Law stamp, $4.00.)

Let plaintiff be authorized to institute and prosecute this
282 suit, and let her residence be at the domicile of her son-in-law, corner of Craps and Port streets, during the pendency of this suit, and let her have the custody of her minor children, as herein prayed for and according to law.

(Signed) E. NORTH CULLOM, *Judge*

New Orleans, Jan'y 12, 1874.

Fifth circuit court for the parish of Orleans. Mrs. J. Fabacher *vs.* Joseph Fabacher, her husband. No. 5314. Wenck & Huft, attorneys.

Copy of petition and citation inside to be served on Joseph Fabacher, New Orleans.

Received January 13, 1874, and on the 14th day — same month and year served a copy of the within citation and accompanying petition on Joseph Fabacher, defendant herein, in person.

Sheriff's fee, $2.00. Ret. same day.

(Signed) FRANK PFISTER, *D'y Sh'f.*

Transferred from the 5th district court. No. 44197. Filed Nov. 5th. Onope Triay.

STATE OF LOUISIANA:

5th Dist. Ct. for the Parish of Orleans, in the City of New Orleans.

MRS. J. FABACHER
vs.
JOSEPH FABACHER, Her Husband. } No. 5314.

M-. Joseph Fabacher, New Orleans:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver you- answer to the same in the office of the clerk of the fifth
283 district court for the parish of Orleans within ten days after the service hereof.

Witness the Honorable E. North Cullom, judge of the said court, this 12th day of January, in the year of our Lord 1874.

(Signed) EDWARD KEENA, *D'y Clk.*

Court-house, opposite Jack. square, corner Chartres and St. Anthony's alley, upstairs.

Answer.

Filed January 17, 1874. Paul T. Abadie, D'y Clerk.

5th District Court.

MRS. J. FABACHER
vs.
JOSEPH FABACHER. } No. 5314.

Now into court comes defendant and pleads the general issue and prays to be dismissed with costs.

(Signed) JOHN S. TULLY,
Att'y for Defendant.

Testimony.

Filed January 17th, 1874.

MRS. J. FABACHER
vs.
J. FABACHER, Her Husband. } No. 5314.

Testimony taken by consent of parties to be submitted for final adjudication.

To the honorable the 5th district court, parish of Orleans:

ANDREAS FREY, in behalf of plaintiff, being duly sworn, says:

284 Knows both parties, pl'ff & def't; knows def't for the last twenty years and pl'ff is a sister of witness; knows that they were married in 1849 or 1850 in this city. There are two issues still living from said marriage, to wit, Antoinetta and Andreas. They reside both *of* this city. Antoinetta is the wife of Martin Droye. Def't left his wife in the year of 1864. Def't is living publicly from said time with Magdalena Frey. Def't has at least eight children with said concubine; the whole is notorious through the city. Pl'ff behaved herself dutiful towards her husband in every respect. Def't had no cause whatever towards his wife.

Cross-examination:

I am the brother of pl'ff and also of Magdalena Frey. All what I said is to my personal knowledge. Yes; I know the children *with* he has with that Magdalena Frey. Pl'ff has done everything possible to please her husband. The concubine of defendant is by him everywhere presented as his wife. I know everything personally, not from hearsay. The concubine and def't are living together now in the same house with the children they had. Pl'ff raised the

children from the marriage. The children are with pl'ff; one is married and the other, Andreas, is not yet of age.

(Signed) ANDREAS FREY.

Subscribed and sworn to before me this 17th day of January, 1874.

(Signed) PAUL F. ABADIE, *D'y Cl'k.*

ANTONY FREY, being duly sworn in behalf of pl'ff, says that he knows both parties; knows def't about twenty years and the pl'ff is the sister of *pl'ff;* knows that they were married
285 about twenty-four years ago in this city. Witness knows all the facts and allegations contained in the petition are true. Witness supports and substantiates all the facts contained and stated in the evidence of Andreas Frey.

Cross-examination:

Pl'ff has behaved her- well towards her husband. She raised the children since def't left her. She never lived with def't any more since 1864. Def't was living with said concubine since 1864 and is still living with him under the same roof. The concubine is treated and called publicly Mrs. Fabacher. Def't never complained to witness and never stated any cause for which he left his wife.

(Signed) ANTONI FREY.

Subscribed and sworn to before me on this 17th day of January, 1874.

(Signed) PAUL T. ABADIE, *D'y Cl'k.*

WILLIAM LANGHEUS, being duly sworn for pl'ff, says that he is acquainted with both parties. Witness was present at the celebration of marriage, about twenty-four years ago. Pl'ff, to my knowledge, has always been an industrious and good woman and has treated her husband kindly. Witness further states that he was living in the neighborhood of the par-ies for at least ten years. Witness says that to the best of his recollection they had only two children, the oldest one called Antoinetta and other, a boy, Andreas. To my knowledge def't left his wife during the war; maybe in 1863 or 1864. After he left his wife he went to live with pl'ff's sister, Magdalena, and is still with her, living yet. They have many children, about six to eight. Def't represents his concubine everywhere as his wife, all of which is known to the community of New Orleans.

Cross-examination:

I know all about it, because I was living in the neighbor-
286 hood for long years. I know his concubine since about 1864. They were living on Washington street, fourth district, in this city. There could be at least — thousand of witnesses got to state what I say. I have no ill feelings against def't except to speak the truth, all of which is known to nearly all the population. I know at least six of the children which he has with his

concubine. Antoinette is married to Mr. Troye. Mrs. Fabacher is living with them.

(Signed) WM. LANGHEUS.

Subscribed and sworn to before me this 17th of January, 1874.

(Signed) PAUL T. ABADIE, *D'y Clk.*

Mrs. J. FABACHER, plaintiff, being duly sworn in her own behalf, *being duly sworn*, says that she was married to defendant in Nov., 1849, in the Josephine church, in this city. There are two children living from said marriage, Antoinetta, who is married to Martin Troye, and Andreas, who is still a minor. Witness has done all in her power to please her husband in every respect, but that her husband, on the contrary, forgetful of his marriage vows, went in the year of 1864 and lived in open concubinage with one Magdalena Frey, with whom he has about eight children.

Cross-examination:

He left me without any cause whatever. I know personally that he is living with said woman and that he has children with her. He could not complain of anything. I done all I could for him.

(Signed) MARIA FABACHER.

Sworn to and subscribed before me this 17th day of January, 1874.

(Signed) PAUL T. ABADIE, *D'y Clk.*

Consent of Parties to Submit. Filed Jan. 18, 1874.

287 MRS. J. FABACHER *vs.* JOSEPH FABACHER. } No. 5314.

To the honorable the judge of the fifth district court, parish of Orleans:

This case is most respectfully submitted to the court for final adjudication on the pleadings and evidence on file.

ERNEST J. WENCK & HUFFT.
Of Counsel for Pl'ff.
JOHN S. TULLY, *Att'y for Defendant.*

Judgment.

In this case, the court considering the law and evidence to be in favor of plaintiff—

It is ordered, adjudged, and decreed that there be judgment in favor of plaintiff, Mrs. J. Fabacher, and against defendant, Joseph Fabacher, her husband, and decreeing a divorce *a vinculo matrimonii* between the said parties.

It is further adjudged and decreed that the said plaintiff do have

the guardianship of her minor son, Andreas, and that defendant pay all costs of suit.

Judgment rendered January 22d, 1874.

Judgment signed January 27th, 1874.

(Signed) E. NORTH CULLOM, *Judge*

288 UNITED STATES OF AMERICA,
State of Louisiana.

Civil District Court for the Parish of Orleans.

(Law stamp, $1.00.)

I, Paul O. Guerin, clerk of the civil district court for the parish of Orleans, do hereby certify that the annexed documents, numbering from pages one to eight, inclusive, are true and correct copies of the originals on file among the archives of my office in the matter of Mrs. J. Fabacher *vs.* J. Fabacher, her husband, under number 5314 of the docket of the late fifth district court for the parish of Orleans, and transferred to the civil district court for the parish of Orleans under number 44197 of its docket.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on
[SEAL.] this 27th day of April, in the year of our Lord one thousand eight hundred and ninety-seven, and in the 121 year of the Independence of the United States of America.

PAUL O. GUERIN, *Clerk.*

I, F. A. Monroe, presiding judge of the civil district court for the parish of Orleans, do hereby certify that Paul O. Guerin is the clerk of said court; that the same is a court of record having probate jurisdiction, and that the signature, Paul O. Guerin, clerk, to the foregoing certificate is in the proper handwriting of him, the said Paul O. Guerin, clerk; to his official act as such full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on
[SEAL.] the 27th day of April, in the year of our Lord one thousand eight hundred and ninety-seven.

F. A. MONROE, *Judge.*

I, Paul O. Guerin, clerk of the civil district court for the
289 parish of Orleans, do hereby certify that F. A. Monroe, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same presiding judge of the civil district court for the parish of Orleans, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said court this 27th day of April, 1897.

PAUL O. GUERIN, *Clerk.*

[Endorsed:] Ex'it "B," M. G., rep. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

290 UNITED STATES OF AMERICA, }
State of [SEAL.] *Louisiana.* }

Civil District Court for the Parish of Orleans.

I, Paul O. Guerin, clerk of the civil court for the parish of Orleans, do hereby certify that the annexed documents, numbering from pages one to thirty-four, inclusive, are true and correct copies of the originals on file and of record among the archives of my office in the matter entitled Succession of Joseph Fabacher, under number 52941 of the docket of this honorable court.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, on this 15th day of November, in the year of our Lord one thousand eight hundred and ninety-seven, and in the 122nd year of the Independence of the United States of America.

[SEAL.] PAUL O. GUERIN, *Clerk.*

I, F. A. Monroe, presiding judge of the civil district court for the parish of Orleans, do hereby certify that Paul O. Guerin is the clerk of said court; that the same is a court of record having probate jurisdiction, and that the signature, Paul O. Guerin, clerk, to the foregoing certificates is in the proper handwriting of him, the said Paul O. Guerin, clerk; to his official act as such full faith and credit are due and owing; and I do further certify that his attestation is in due form of law.

Given under my hand, at the city of New Orleans, on the 16th day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

[SEAL.] F. A. MONROE, *Judge.*

[Endorsed:] Filed in circuit court, Waukesha county, Wis., Jan. 5, 1898. C. W. Fraser, clerk.

291 I, Paul O. Guerin, clerk of the civil district court for the parish of Orleans, do hereby certify that F. A. Monroe, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same presiding judge of the civil district court for the parish of Orleans, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said court this 16th day of November, 1897.

[SEAL.] PAUL O. GUERIN, *Clerk.*

(Fifty cents law stamps.)

292 ($21.50 law stamps.)

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

Civil District Court for the Parish of Orleans.

Petition of Mrs. Antoinette Thorman, Born Fabacher, for Writ of Sequestration, for Inventory, and for Appraisers.

Filed October 11, 1897.

Succession of JOSEPH FABACHER. No. 52941. Division B. Hon. Fred. D. King, Judge.

To the Honorable Fred D. King, judge of said court:

The petition of Mrs. Antoinette Thormann (born Fabacher), joined, authorized, and assisted by her husband, Charles W. Thormann, herein appearing in her capacity as administratrix of the succession of Joseph Fabacher, a resident of this city, respectfully shows—

That among the property left by said deceased and situated within the jurisdiction of this honorable court are the movables contained in the premises No. 1716 Calhoun street, in the 7th district of this city, consisting of household and kitchen furniture; also personal property of any nature, kind, or description whatsoever contained in said premises.

293 That on the 5th day of April, 1897, the notary appointed to take the inventory of the property and effects belonging to the succession of said deceased repaired to his late residence, No. 1716 Calhoun street, and there requested Mrs. Magdelena Frey, claiming to be the widow of Joseph Fabacher, deceased, to point out the property and effects of said deceased for the purpose of taking the inventory of said deceased, in accordance with this honorable court; but the said Magdelena Frey, claiming to be the widow of said Joseph Fabacher, deceased, falsely stated and informed said notary that the deceased was not the owner of the furniture, moveables, or effects contained in said premises; that the same were owned entirely and exclusively by Lawrence Fabacher, as will more fully appear by the inventory and process verbal of said notary, herein filed and made part of this petition.

Now, your peti-oner alleges and avers that the statement of said Magdelena Frey, claiming to be the widow of Joseph Fabacher, deceased, that the said deceased was not the owner of the furniture, moveables, or effects contained in said premises, No. 1716 Calhoun street, but that the same were owned entirely and exclusively by Lawrence Fabacher, is and was at the time — making said statement false, fraudulent, and untrue, and made for the purpose of misleading and deceiving the notary and appraiser appointed to take said inventory.

Your petitioner avers that the truth and facts are that Joseph Fabacher in his lifetime was and his succession (represented by your petitioner as administratrix thereof) is now the sole,
294 true, and lawful owner of all said movable property and effects contained in the premises No. 1716 Calhoun street, in the 7th district of this city, and occupied by the said Joseph Fabacher, deceased, at his residence at the time of and before his death; that said property should be brought into and administered upon in his succession.

That said moveables and effects contained in said premises No. 1716 Calhoun street, belonging to the succession of said deceased, are fully worth the sum of seven hundred dollars ($700).

Your petitioner fears and believes that the said Magdelena Frey, claiming to be the widow of Joseph Fabacher, deceased, and Lawrence Fabacher, who are in the possession of said property and have the same under their control, are combining, colluding, and confederating together for the purpose of depriving this succession of the ownership and possession of said property; that they may send the said moveables and effects contained in said premises, No. 1716 Calhoun street, in the 7th district of this city, out of the jurisdiction of this court during the pendency of this suit, or conceal, part with, or dispose of the said movables in their possession during the pendency of this suit.

Whereof peti-oner prays, the annexed affidavit considered, and upon peti-oner giving bond in such sum as the court may determine, that a writ of sequestration do issue herein commanding the civil sheriff to seize and take into his possession and to keep until after the decision of this suit all of the movables and personal effects of whatever nature, kind, or description contained in the premises No. 1716 Calhoun street, in this city, the late residence of Joseph Fabacher, deceased, and that the same be inventoried and appraised according to law by the notary & appraisers herein
295 appointed; that Mrs. Magdelena Frey, known as the widow of Joseph Fabacher, and Lawrence Fabacher be severally cited to appear and answer this petition, and after due proceedings judgment be rendered decreeing the succession of Joseph Fabacher to be the true, sole, and lawful owner of all of said movables and personal effects contained in the premises No. 1716 Calhoun street, in this city, the late residence of Joseph Fabacher, deceased, and that peti-oner, in her capacity as administratrix, be entitled to the custody, possession, and control of said property, and that the same be delivered up to her, and in default the said defendants be condemned *in solido* to pay unto your peti-oner the value of said property, to wit, the sum of seven hundred dollars ($700), with interest, costs, and for general relief, and that the writ of sequestration herein — maintained and perpetuated.

(Signed) E. HOWARD McCALEB,
Attorney for Peti-oner.

Affidavit, Annexed to & Made Part of Petition.

Mrs. Antoinette Thorman (born Fabacher), *who*, after being first duly sworn, deposes and says that all the facts alleged in the foregoing petition are true.

(Signed) MRS. ANTOINETTE THORMAN.

Sworn to and subscribed before me this 12th day of September, 1897.

(Signed) ARTHUR B. LEOPOLD,
[SEAL.] *Notary Public.*

296 *Bond for Writ of Sequestration, Annexed to Petition.*

Filed October 11th, 1897.

Bond for writ of sequestration.

Know all men by these presents that we, Mrs. Antoinette Thorman, administratrix, as principal, and E. H. McCaleb, Jr., as surety, of the city of New Orleans and State of Louisiana, are held and firmly bound unto Paul O. Guerin, clerk of the civil district court for the parish of Orleans, and his successors in said office in the sum of seven hundred, $700.00, dollars, lawful money of the United States of America; for which payment, well and truly to be made to the said clerk or his successors, we bind ourselves *in solido*, and each of our executors, administrators, heirs, and assigns, firmly by these presents.

Sealed with our seals. Dated the 11th day of October, 1897.

Whereas the said Mrs. Antoinette Thorman, administratrix, has this day presented a petition to the civil district — for the parish of Orleans praying a writ of sequestration to issue in the succession of Joseph Fabacher against Magdelena Frey Fabacher and Lawrence Fabacher:

Now, the condition of the above obligation is that we, the above-bound principal and surety, will well and truly pay to said clerk or his successors in office, for the benefit of any and all persons interested in said suit, all such damages as may be recovered against us in case it should be decided that the said writ was wrongfully obtained.

(Signed) MRS. ANTOINETTE THORMAN. [SEAL.]
" E. H. McCALEB, JR. [SEAL.]

Signed, sealed, and delivered in presence of—

—— ——.

297 *Order.*

Let a *rivt* of sequestration issue herein as prayed for and according to law upon petitioner giving bond in the sum of seven hundred dollars ($700.00), and let said property sequestered be inven-

toried by A. B. Leopold, notary public, and appraised by the appraisers appointed herein, all as prayed for and according to law.

New Orleans, La., October 11th, 1897.

(Signed) F. A. MONROE, [SEAL.]
Judge of this Court, Div. C, Acting for the Hon. Fred D. King, Judge Div. B, Now Absent.

Petition to Bond Sequestration & Order Thereon.

Filed October 12, 1897.

Civil District Court, Division B.

Succession of JOSEPH FABACHER. No. 52941.

To the honorable the judge of the civil district court, division "E:"

The petition of Mrs. Magdelena Frey, widow of Joseph Fabacher, and of Lawrence Fabacher, reserving all just and proper defences of the suit instituted against them in the above-entitled proceedings by Mrs. Antoinette Thorman, claiming to act as administratrix of the succession of Joseph Fabacher, and as such seeking to obtain possession and control of the property of said estate and of certain household furniture, the value of which is alleged to be seven hundred dollars ($700), and further showing that your petitioners desire to avail themselves of the provision of law applicable in the premises to release the property seized under the writ of sequestration herein by giving bond therefor, and being willing to furnish such bond to the sheriff of this honorable court to the amount of the value of said property fixed in the petition herein or such amount as the appraisement to be made by the sheriff may show its value to be, they pray:

298

That they may be allowed to release said property on executing a bond to the civil sheriff of this honorable court, as the law may direct, in the sum of seven hundred dollars or for such sum as the value of the property may be determined to be upon inventory and appraisement to be made by the sheriff; and they pray for general relief.

(Signed) BUCK, WALSHE & BUCK, *Att'ys.*

Order.

Let the civil sheriff of this honorable court be, and he is hereby, authorized to accept the forthcoming bond of Mrs. Magdelena Frey Fabacher for the release of the property sequestrated in the above-entitled proceedings in the sum of seven hundred dollars or in the sum at which the property may be appraised by the sheriff, with good and solvent surety, conditioned as the law directs.

New Orleans, 12th October, 1897.

(Signed) F. A. MONROE, [SEAL.]
Judge of this Court, Div. C, Acting for the Hon. Fred D. King, Judge Div. B, Now Absent.

299 *Answer & Disclaimer of Lawrence Fabacher.*

Filed October 13, 1897.

Civil District Court, Division B.

Succession of JOSEPH FABACHER. No. 52941.

Now appears Lawrence Fabacher, served and cited as defendant herein, and, without waiving or admitting anything, files this his disclaimer of any interest in the subject-matter of the demand of plaintiff's petition for inventory, seizure, etc., of certain movable effects alleged to be contained in the house 1715 Calhoun street and claimed to belong to the estate of Joseph Fabacher, deceased.

He declares that he has no interest whatever, as owner or possessor for himself or as agent for any other person as owner or possessor, in said property.

He therefore prays to be hence dismissed with costs, and prays for general relief, as in duty bound, etc.

(Signed) BUCK, WALSHE & BUCK,
" DART & KERNAN, *Att'ys.*

Petition to Amend Order to Bond & Order Thereon.

Filed October 13, 1777.

Division B.

Succession of JOSEPH FABACHER. No. 52941.

To the honorable the judge of division "B," civil district court:

300 The petition of Mrs. Magdelena Frey, widow of Joseph Fabacher, defendant in the matter of the suit instituted by the pretended administratrix in the succession of Joseph Fabacher for possession, etc., of certain movable property contained in the house 1715 Calhoun street, in this city, respectfully shows:

That heretofore, jointly with Lawrence Fabacher, made codefendant, she applied for and obtained an order to bond the sequestration and obtain a release of the property seized thereunder.

Now, further showing to this honorable court that her said codefendant, Lawrence Fabacher, disclaims any interest in the matter and had filed an answer herein to that effect and declines to avail himself of the permission granted to bond—

And your petitioner shows that she is desirous, as sole person asserting any right or interest in the property seized at this time, — she is entitled to bond same, etc.

Wherefore she prays that the order heretofore granted authorizing herself and Lawrence Fabacher to give bond to the sheriff and obtain release of the property sequestrated be so amended as to

permit your petitioner in her sole right to give bond, and that the sheriff be authorized to accept the same.

And she prays for general relief, etc.

(Signed) BUCK, WALSHE & BUCK,
Att'ys for Petitioner.

Order.

The allegations of the foregoing petition and the answer of Lawrence Fabacher, on file, disclaiming any interest whatsoever in the property sequestrated, considered—

It is ordered that the order hereinbefore granted authorizing
301 petitioner and her codefendant, Lawrence Fabacher, to bond said property be so amended as to authorize the civil sheriff of this honorable court to accept the sole and separate bond of petitioner, Mrs. Magdelena Frey Fabacher, under the conditions otherwise stated in the original order.

New Orleans, October 13th, 1897.

(Signed) F. A. MONROE,
Judge of this Court, Div. C, Acting for the Hon. Fred D. King, Judge Div. B, Now Absent.

Sheriff's Return on Two Citations.

Filed October 13, 1897.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

Succession of JOSEPH FABACHER. No. 52941.

Mr. Lawrence Fabacher, New Orleans, La.:

You are hereby summoned to comply with the demand contained in the petition of which copy accompanies this citation or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service thereof.

Witness the Honorables F. A. Monroe, N. H. Rightor, T. C. W. Ellis, Fred D. King, Geo. H. Thread, judges of the said court, this 11th day of October, in the year of our Lord 1897.

(Signed) F. E. PETERSON,
Deputy Clerk. [SEAL.]

Court-house, opposite Jackson square.

302 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, in the City of New Orleans.

Succession of JOSEPH FABACHER. No. 52941.

Mrs. Magdelena Frey, known as the widow of Joseph Fabacher, New Orleans, La.:

You are hereby summoned to comply with the demand contained in the petition of which copy accompanies this citation or deliver your answer to the same in the office of the clerk of the civil district court for the parish of Orleans within ten days after the service thereof.

Witness the Honorables F. A. Monroe, N. H. Rightor, T. C. W. Ellis, Fred D. King, Geo. H. Thread, judges of the said court, this 11 day of October, in the year of our Lord 1897.

(Signed) F. E. PETERSON,
Deputy Clerk. [SEAL.]

Court-house, opposite Jackson square.

Writ of Sequestration, Sheriff's Return on Same and on Orders and Bond for Release. Filed October 13, 1897.

303 STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

Succession of JOSEPH FABACHER. No. 52941.

The State of Louisiana to the civil sheriff for the parish of Orleans, New Orleans, Greeting:

You are hereby commanded, in the name of the State of Louisiana and of the civil district court for the parish — Orleans, to seize, sequester, and take into your possession and safely hold until order of this court all of the movables and personal effects of whatever nature, kind, or description contained in the premises bearing the municipal No. 1716 Calhoun street, in this city, the late residence of Joseph Fabacher, deceased.

And what you do in the premises make return thereof, together with this writ, to our said court as the law directs.

Witness the Honorables F. A. Monroe, N. H. Rightor, Geo. H. Thread, T. C. W. Ellis, and F. D. King, judges of our said court, this 11th day of October, in the year of our Lord one [SEAL.] thousand eight hundred and ninety-seven, and in the one hundred and twenty-second year of the Independence of the United States.

(Signed) P. A. DUCOING, *D'y Clerk.*

304 No. 52941. Civil district court for the parish of Orleans. Succession of Joseph Fabacher. E. Howard McCaleb, attorney. Writ of sequestration.

Received Monday, October 11, 1897, and on the same day seized and took into my possession all the movables and personal effects contained in the premises No. 1716 Calhoun street, in the city, as will more fully appear by reference to the notice of seizure hereto annexed and the return thereon made part hereof. Subsequently, to wit, on the 12th day of October, 1897, said seizure was released and the property seized restored to the possession of Mrs. Magdelena Frey Fabacher, widow of Joseph Fabacher, one of the defendants herein, she having given bond in the sum of thirteen hundred and forty-one $\frac{70}{100}$ dollars, as per order of court hereto annexed and made part of this return, with Peter Fabacher as surety, the amount of said bond being the appraised value of the property herein seized as per inventory on file — the civil sheriff's office.

Orders, bond, and writ returned October 13th, 1897.

(Signed) WM. WALSH, *Dy Sheriff.*

Sh'ff's fees for this writ, 2.00

305 In the Civil District Court for the Parish of Orleans.

State of Louisiana, civil sheriff's office, parish of Orleans.

Succession of JOSEPH FABACHER. No. 52941.

NEW ORLEANS, *Oct.* 14, 1897.

To Magdelena Freay, known as the widow of Joseph Fabacher, defendant, New Orleans:

Please to take notice that by virtue of a writ of sequestration issued in the above-mentioned suit I have seized and taken into my possession all of the movable and personal effects of whatever nature, kind, or description contained in the premises bearing the municipal No. 1716 Calhoun street, in this city, the late residence of Joseph Fabacher, deceased.

(Signed) J. E. LAVANDAIS, Jr.,
Deputy Sheriff.

And on Oct. 11, 1897, I served a copy of the within notice of seizure personally on Magdelena Frey, known as the widow of Joseph Fabacher, defendant herein.

JOHN B. BAYARD,
Dp'ty Sheriff.

Sheriff's fees, 50c.

306 Know all men, that we, Mrs. Magdelena Frey Fabacher, widow of Joseph Fabacher, as principal, and Peter Fabacher, as surety, are held unto Frank Marquez, civil sheriff of the parish of Orleans, in the State of Louisiana, in the penal sum of thirteen hundred and forty-one $\frac{70}{100}$ dollars ($1,341.70); for the payment — to the said civil sheriff, his executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators, respective-, by these presents, as witness our respective names

hereunto annexed, at New Orleans, this 12th day of October, in the year eighteen hundred and ninety-seven.

Whereas in and by virtue of a writ of sequestration issued out of the honorable the civil district court for the parish of Orleans, at the suit of Antoinette Thorman, adm'x of succ'n of Joseph Fabacher *vs.* Mrs. Magdelena Frey Fabacher and Lawrence Fabacher, and numbered 52941 on the docket of the said court, and which suit is now pending therein, the following-described property, to wit: All the furniture, movable property, and personal effects contained in premises No. 1716 Calhoun St., as per inventory on file in civil sheriff's office, had been seized and taken into custody of the said sheriff and detained according to law, but the same has been released and delivered to the defendant, Mrs. M. F. Fabacher, by order of the court upon the appearance of the said defendant in the said suit and delivering to the said civil sheriff the present obligation; the condition of which is such that if the said defendant shall not send the above-described property out of the jurisdiction of the court, and that he will faithfully present the same in case he should be decreed to restore the same to the plaintiff, and shall satisfy such judgment
307 as may be rendered in the suit pending as above mentioned, then this obligation to be void, or else to remain in full force.

(Signed) MRS. MAGDELENA FREY, *Widow, etc.*,
By BUCK, WALSHE & BUCK, *Att'ys.*
" PETER FABACHER.

Signed and delivered in presence of—
(Signed) WM. WALSH.

Affidavit.

STATE OF LOUISIANA:

Clerk's office, civil district court, parish of Orleans.

I, —— ——, do solemnly swear that I reside in the parish of Orleans; that I have property in my own right unincumbered and of sufficient value to satisfy amount of within bond, and that after the payment of all my debts and liabilities I am worth over and above the said amount, and that I am not tutor of minor children; that there exists no legal impediment to my signing said bond, and that I have not signed any obligations which may vitiate the validity of this bond.

—— ——.

Sworn to and subscribed before me this — day of ——, 189–.

—— ——,
Clerk Civil District Court, Parish of Orleans.

Filed Oct. 13th, 1897.
(Signed) F. E. PETERSON, *D'y Clerk.*

Transfer.

ATE OF LOUISIANA :

Office civil sheriff, parish of Orleans.

NEW ORLEANS, *October 12th*, 1897.

I do hereby transfer, assign, and set over to Mrs. A. Thorman, lm'x Joseph Fabacher, pl'ff herein, all my right, title, and interest and to the within bond.

(Signed) For FRANK MARQUEZ, *Civil Sheriff*,
WM. WALSH, *D'y Sh'ff.*

08 *Petition to Homologate & Order Thereon.*

Filed November 2, 1897.

Civil District Court, Division B.

Succession of JOSEPH FABACHER. No. 52941.

To the Honorable F. D. King, judge of said court :

The petition of Mrs. Antoinette Thorman (born Fabacher), administratrix of the succession of Joseph Fabacher, respectfully shows :

That pursuant to an order of this honorable court, dated the 11th day of October, 1897, an inventory was made by Arthur B. Leopold, notary pyblic, of the property left by Joseph Fabacher, deceased, situated within the jurisdiction of this honorable court and contained in the premises No. 1716 Calhoun street, consisting of household and kitchen furniture, also personal property of any nature, kind, or description whatsoever contained in said premises, a duly certified — whereof is hereto annexed.

Wherefore petitioner prays that the inventory and apprais-ment made by Arthur B. Leopold, notary public of this parish, on the 12th day of October, 1897, be approved and homologated.

And for general relief.

(Signed) E. HOWARD M'CALEB,
Att'y for Petitioner.

Order.

Let the inventory and apprais-ment made by Arthur B. Leopold, notary public of this parish, on October 12, 1897 (a duly authenticated copy whereof is herewith filed), be approved and homologated, all as prayed for and according to law.

New Orleans, La., November 2d, 1897.

(Signed) FRED D. KING, *Judge.*

309 *Copy of Inventory.*

Filed November 2, 1897.

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans, Parish of Orleans.

By virtue of and pursuant to an order of the Honorable F. A. Monroe, judge of the civil district court for the parish of Orleans, acting for the Honorable Fred D. King, judge of division "B" of said court, now absent, bearing date the 11th day of October, 1897, directing that an inventory be made by the undersigned notary, which order is in the following words and figures, to wit, "Let a writ of sequestration issue herein as prayed for and according to law, upon petitioner giving bond in the sum of seven hundred dollars, and let said property sequestered be inventoried by A. B. Leopold, notary public, and appraised by the appraisers appointed herein, all as prayed for and according to law," said order having been rendered upon the petition of Mrs. Antoinette Thorman (born Fabacher), administratrix of the succession of Joseph Fabacher, deceased, in the proceedings entitled Succession of Joseph Fabacher, No. 52941 of the docket of said court, division "B," a duly certified — of which said petition and order of court thereon are hereto annexed for reference—

Be it known that on this 12th day of October, in the year 1897, I, Arthur B. Leopold, a notary public in and for the parish of New Orleans, State of Louisiana, aforesaid, duly commissioned and qualified, and assisted by, 1st, Messrs. B. Dreifus and G. P. Malloy, the appraisers appointed by said honorable court and duly sworn to faithfully value the property to be inventoried herein;

310 2nd, Messrs. A. M. Heydel and John B. Bayard, witnesses of lawful age, did proceed to the taking and making of the inventory and appraisement of the property left by Joseph Fabacher, deceased, situated within the jurisdiction of this honorable court, and contained in the premises No. 1716*m* Calhoun street, in the 7th district of this city, consisting of household and kitchen furniture, also personal property of any nature, kind, or description whatsoever contained in said premises.

Whereupon the inmates of said premises objected and protested to the entry by me, notary, upon said premises, and Charles F. Buck, Esq, attorney-at-law, representing the defendants to the petition of sequestration, Mrs. Magdelena Frey, widow, etc.; Lawrence Fabacher, and the legatees of the deceased Joseph Fabacher under his will, protested in their name and declared that the order upon which the sheriff and me, notary, were proceeding was utterly null and void, the court being without jurisdiction in the premises; and before proceeding with the taking of the inventory by the sheriff in execution of the writs of sequestration, and by me, notary, under the said order dated October 11, 1897, the said Charles F. Buck, Esq., attorney-at-law, representing the defendants to the petition for sequestration, Mrs. Magdelena Frey, widow, etc.; Lawrence Fabacher,

and the legatees of the deceased Joseph Fabacher, under his will, handed me, notary, a written protest, which is hereto annexed for reference and made a part hereof.

311 *Contents of the Premises No. 1716 Calhoun Street, 7th District of this City, the Late Residence of Joseph Fabacher, Deceased.*

Parlor.

1. 1 Pleyel piano, with stool & cover, valued at the sum of one hundred dollars	$100.	
2. 1 table and cover, valued at the sum of six dollars	6.	
3. Rocker and 3 chairs (cane seat), valued at five dollars	5.	
4. Carpet on floor, valued at eight dollars	8.	
5. Fire screen, valued at seventy- — cents	.75	
6. One pair spittoons (porcelain), valued at one dollar	1.	
7. 3 pieces of ornaments on mantle, valued at one and 25/100 dollars	1.25	
8. One violin, valued at one hundred dollars	100.	
9. Tableau on wall, valued at two dollars	2.	
10. 6 family pictures, valued at two dollars	2.	
11. One glass chandelier, valued at twenty dollars	20.	
12. Two shades, 1 curtain rod, valued at one dollar	1.	
13. 3 albums, valued at one dollar	1.	
14. Music books and music sheets, valued at two dollars	2.	
Total appraised value of parlor, the sum of two *and* hundred and fifty dollars		250.

312 Hall (front).

15. Hat-rack and mirror, valued at eighteen dollars	$18.	
16. Marble-top table, valued at six dollars	6.	
17. Aquarium and fish, valued at three dollars.	3.	
18. Two cane-seat chairs, valued at four dollars.	4.	
19. One carpet strip ab. 35 ft., more or less, valued at ten dollars	10.	
20. Two wall pictures, valued at one dollar	1.	
		$42.00
Amount carried over		$250.00
21. One family picture and frame, valued at one and 25/100 dollars	1.25	
Total appraised value of hall (front), the sum of forty-three & 75/100 dollars		43.25

Reading-room.

22. Carpet covering hallway & reading-room, valued at twenty dollars	$20.00	
23. 1 rattan rocker, valued at one and 50/100 dollars	1.50	
24. 2 cane-seat rockers and two chairs, valued at six dollars	6.00	
25. 40 volumes books, more or less, in book-case, valued at twenty-five dollars	25.00	
26. 2 pieces of ornaments, valued at fifty cents.	.50	
27. 1 family picture, valued at twenty-five cents.	.25	
28. 1 pair spittoons, valued at one and 50/100 dollars	1.50	
313		
29. 1 picture of L. Fabacher's residence, N. O., valued at seventy-five cents	.75	
30. 1 centre table, valued at five dollars	5.00	
31. 1 small jardiniere, valued at fifty cents	.50	
Total appraised value of reading-room, the sum of sixty-one dollars.		61.00

Continuation of hall back of reading-room.

32. Four family portraits, valued at two dollars. Cane-bottom chair, 3 rugs, and centre-table cover, valued together at two and 10/100 dollars	$2.00 2.10	
Total appraised value of continuation of hall back of reading-room, four and 10/100 dollars, $4.10		4.10

Bed-room (next to reading-room).

33. One armoir-, valued at twenty dollars	$20.00	
34. One dresser and mirror, valued at twelve dollars	12.00	
35. 1 washstand and furnishings, valued at ten dollars	10.00	
		$42.00
Amount carried over		$358.35
36. 1 towel-rack, valued at one and 50/100 dollars	$1.50	
37. Two cane-seat chairs, valued at one and 50/100 dollars	1.50	
38. One bed, valued at twenty-five dollars	25.00	
39. 1 marble-top table and mirror, valued at four dollars	4.00	

314

40. 8 ornaments (1 pair crystal cave, claimed), valued at two and 50/100 dollars..... 2.50
41. 1 family picture and frame, valued at one and 50/100 dollars..... ..... 1.50
42. Two window shades, valued at one dollar.. 1.00
43. One chandelier, valued at twenty dollars... 20.00
45. Carpet on floor, valued at eight dollars.... 8.00
46. Armoir- containing lot of wearing apparel, claimed by J. Fabacher..... .....

Total appraised valu- of bed-room next to reading-room, the sum of one hundred & seven dollars..... ——— 107.00

Dining-room.

47. One extension table, valued at fifteen dollars. 15.00
48. Three cane-seat chairs, valued at two & 25/100 dollars..... .... 2.25
49. One sideboard, valued at twenty dollars... 20.00
50. 16 assorted glasses, valued at one dollar.... 1.00
51. Two silver-plated napkin rings & castors, valued at four dollars..... .. .. 4.00
52. 1 silver mug, valued at two dollars... .... 2.00
53. Silver-plated sugar bowl, with tongues, butter dish and knife, valued at three dollars... 3.00
54. Fancy cups and saucers, with stands, valued at one dollar .... 1.
55. Glass stand and cover & celery urn, valued at two dollars..... 2.

315

56. Tray, decanter, 5 glasses, and water pitcher, valued at two dollars..... ... 2.
57. Eight pieces on mantle, valued at two dollars. 2.
58. Two window shades, valued at one dollar.. 1.
59. 19 silver spoons and forks, valued at fifteen dollars..... .... 15.

——— 70.25

Amount carried over $465.35

60. Solver soup ladel, valued at one dollar..... 1.00
61. 7 tea (silver) spoons, valued at two dollars.. 2.
62. 1 large knife and fork, valued at two dollars. 2.
63. 9 knives and carving knives, valued at one and 25/100 dollars.... .... 1.25
64. 7 linen table-cloths, valued at seven dollars.. 7.00
65. Four table towels, valued at one and 50/100 dollars..... .... 1.50
66. Two bottles champagne,
67. Two pints of Mumm,

68. 1 bottle Curacao, appraised together at three dollars	3.00	
69. Chandelier, four lights, valued at two and 50/100 dollars	2.50	
Total appraised value of dining-room, the sum of ninety and 50/100 dollars		90.50

Pantry.

70. 33 assorted glasses, valued at one and 50/100 dollars	1.50	
71. 1 tea set (37 pieces), valued at ten dollars	10.00	
72. 1 doz. napkins, valued at sixty cents	.60	
73. 1 refrigerator, valued at six dollars	6.00	
316		
74. 1 cane-seat chair, valued at twenty-five cents.	.25	
75. One lot agate ware, valued at one & 50/100 dollars	1.50	
Total appraised value of pantry, the sum of nineteen and 85/100 dollars		19.85

Kitchen.

76. Garland and fixtures, valued at twenty dollars	20.00	
77. Lot of cooking utensils, valued at six dollars.	6.00	
78. Table, valued at fifty cents	.50	
79. 1 Vaissellieres and lot of chinaware, values at eleven dollars	11.00	
80. Metallic dish-washer, valued at five dollars	5.00	
81. Two window shades, valued at one dollar	1.00	
Total appraised value of kitchen, the sum of forth-three and 50/100 dollars		43.50
Amount forwarded		$619.20

Bed-room next to hall (river side).

82. 1 maple bed and bedding and bar, valued at forty dollars	40.00	
83. 1 maple armoir-, valued at forty dollars	40.00	
84. 1 maple dresser, valued at twenty dollars	20.00	
85. 1 washstand (furnished), valued at fifteen dollars	15.00	
86. Two cane-seat chairs, valued at one dollar	1.00	
87. Square table, valued at fifty cents	.50	
88. Four shades, valued at two dollars	2.00	

317

89. Two pair- lace curtains, window shades, and rods, valued at twelve dollars..... 12.00
90. Four pictures (3 family), valued at two dollars 2.00
91. Carpet on floor, valued at ten dollars 10.00
92. 1 towel rack, valued at fifty cents..... .50
93. Lot of ladies' wearing apparel in armoir-...

Total appraised value of bed-room, the sum of one hundred and forty-three dollars.... .... ——— 143.00

Bed-room in rear of the preceding.

94. 1 bed, bedding, and bar (maple), } 3 pieces, 1 a-moir- & 1 dresser " } valued at one hundred and fifty dollars.. $150.00
95. 1 rattan rocker and cane-seat chair, valued at two and 50/100 dollars..... 2.50
96. Carpet on floor, valued at fifteen dollars.... 15.00
97. 4 pictures on wall, valued at two dollars... 2.00
98. Two window shades and poles, valued at one and 25/100 dollars... ... . 1.25
99. Two candlesticks, valued at fifty cents..... .50
100. Armoir- containing lot of ladies' wearing apparel.... .....

Total appraised value of bed-room, the sum of one hundred and seventy-one 25/100 dollars ..... ——— 171.25

318 Bath-room.

101. Porcelain bath-tub, washstand and bowl, 1 Acme heater, 1 table rack, 2 chairs, 1 strip of carpet, oil-cloth, and two shades, valued at sixty dollars..... $60.00

Amount brough- over..... .... $993.45

Next bed-room.

102. 1 bed, bedding and bar, 1 armoir-, 1 dresser, 1 center table, appraised together at one hundred and fifty dollars $150.00
103. Three chairs and rocker, valued at three dollars 3.00
104. Two window shades, valued at one dollar.. 1.00
105. Two family portraits, valued at one dollar.. 1.00
106. 1 holy picture, valued at one and 50/100 dollars..... ..... 1.50
107. 1 clock, valued at ten dollars..... 10.00

108. 1 lot ladies' and gents' wearing apparel in armoir-
109. Carpet on floor, valued at fifteen dollars.... 15.00

Total appraised value of bed-room, the sum of one hundred & eighty-one 50/100 dollars.—— 181.50

Sitting-room.

110. 1 Singer sewing machine and cover, valued at fifteen dollars..... $15.00
111. One extension table and table-cloth, valued at six dollars..... 6.00
112. 1 writing and revolving chair, valued at eight dollars..... 8.00

319

113. 1 large heater, pipes, and screen, valued at twenty-five dollars..... 25.00
114. Carpet on floor, valued at fifteen dollars.... 15.00
115. Two cane chairs and baby chairs, valued at two dollars..... 2.00
116. One rubber rug, valued at one dollar..... 1.00
117. Seven window shades, valued at three and 50/100 dollars..... 3.50
118. 1 chandelier (four burners), valued at two and 50/100 dollars..... 2.50

Total appraised value of sitting-room, the sum of seventy-eight dollars..—— 78.00

Amount carried forward..... 1,252.95

Small room next to dining-room.

119. One oak glass-door a-moir-, valued at teenty-five dollars..... $25.00
120. 1 combination folding bed, valued at twenty-five dollars..... 25.00
121. 1 step-ladder and shade, valued at seventy-five cents..... .75
122. 1 clothes rack, valued at fifty cents..... .50
123. Two trunks with old clothes.....

Total appraised value, fifty-one and 25/100 dollars.....—— 51.25

Attic.

124. Six rugs, valued at three dollars..... $3.00
125. Three chairs, valued at one dollar..... 1.00
127. 1 looking-glass and four trunks, valued at.. 1.00

320 Total appraised value of attic, the sum of five dollars.....—— 5.00

Laundry.

127. Five flat smoothing irons, 1 table, one ironing board, 1 butter churn, 1 pair shears, 2 sickles, valued together at four dollars 4.00

Stable.

128. One surrey, valued at fifty dollars	$50.00	
129. One garden reel and hose, valued at six dollars	6.	
130. Wheelbarrow, valued at fifty cents	.50	
131. Wagon-jack, valued at one dollar	1.00	
132. One step-ladder, valued at one and 50/100 dollars	1.50	
133. 1 rake, valued at fifty cents	.50	
134. 1 large heater, valued at five dollars	5.00	
135. 1 lot stable utensils, lantern, etc., valued at one dollar	1.00	
136. One iron bed, bedding, and 1 chair, valued at three dollars	3.00	
Total appraised value of stable, the sum of sixty-eight and 50/100 dollars		68.50
Total appraised value of this inventory, the sum of one thousand three hundred and eighty — and 71/100 dollars		$1,381.70

321 And there being nothing to be included in the inventory, I, notary, do now close the same, with a total appraisement of one thousand three hundred & eighty-one 70/100 dollars $1,381.70

Thus done and passed in the city of New Orleans on the day, month, and year hereinabove written in the presence of A. M. Heydel and John B. Bayard, competent witnesses, residing in this parish, who have signed this inventory, together with said appraisers and me, notary, after due reading of the whole.

(Original signed) B. DREIFUS.
G. P. MOLLOY.
ARTHUR B. LEOPOLD,
Notary Public.

Witnesses:
A. M. HAYDEL.
JOHN B. BAYARD.

A true copy of the original of record and on file in my notarial archives.

In faith whereof I hereunto set my signature and seal of office this 30th day of October, 1897.

[SEAL.] (Signed) ARTHUR B. LEOPOLD, *Not. Pub.*

Petition for Sale of Property to Pay Debts of Succession, List of Debts Due, and Order Thereon. Filed November 2, 1897.

322 Civil District Court, Division B.

Succession of JOSEPH FABACHER. No. 52941.

To the honorable — of division "B," civil district court for the parish of Orleans:

The petition of Antoinette Thorman (born Fabacher), wife of Charles W. Thorman and by her said husband herein joined, authorized, and assisted, administratrix of this succession, respectfully shows:

That there are debts due and owing by this succession which ought to be paid, and the parties to whom they are due insist upon payment thereof; that petitioner herewith files as pert hereof a detailed list of said debts and obligations due and owing to this sussession; that the only property which has come into possession of your petitioner is the lot of ground and tomb described in the inventory herein taken as follows: "One marble tomb in lots situated in St. Joseph's cemetery # 2, bearing the inscription, 'Family tomb of Joseph Fabacher;' also two (2) galvanized-iron sofas and five (5) vases;" that said property should be sold in order to pay the debts enumerated in the annexed list after due advertisements and delays.

Wherefore petitioner prays, the annexed affidavit considered, that the following-described property, to wit, "one marble tomb in the lots situated in St. Joseph's cemetery # 2, bearing the inscription, 'Family tomb of Joseph Fabacher;' also two (2) galvanized-iron sofas and five (5) vases," be sold by William A. Kernaghan, a duly licensed auctioneer of this city, after due advertisements and delays, for the purpose of paying the debts due and owing by this succession; and petitioner prays for general relief.

(Signed) E. HOWARD McCALEB,
Attorney for Petitioner.

323 *Affidavit Annexed to Petition to Sell Property.*

Antoinette Thorman, being duly sworn, deposes and says that all the allegations in the foregoing petition contained are true.

(Signed) MRS. ANTOINETTE THORMAN.

Subscribed and sworn to before me this 20th day of October, 1897.

[SEAL.] (Signed) ARTHUR B. LEOPOLD,
Notary Public.

Debts Due by Succession.

E. Howard McCaleb, attorney for succession	$350.00
Bernard Bruenn, Esq., att'y for absent heirs	50.00
B. Dreifus and G. P. Molloy, appraisers appointed to appraise inventory, twelve and $\frac{50}{100}$ dolllars each ($12.50)	25.00
Arthur B. Leopold, notary public, taking inventory	50.00
Cost of court, sheriff, and clerk, about	75.00
	$550.00

Order.

Let the property described in the foregoing petition be sold by William A. Kernaghan, a duly authorized auctioneer of this city, for the purpose of paying debts due and owing by this succession after due advertisements and delays; all as prayed for and according to law.

New Orleans, La., November 2nd, 1897.

(Signed) FRED D. KING, *Judge.* [SEAL.]

J. J. S.

324 *Copy of Petition and Order to File Copy of Protest, Annexed to Notary's Inventory, Nunc pro Tunc.*

Filed November 29, 1897.

Civil District Court, Division "B," Parish of Orleans.

Succession of JOSEPH FABACHER. No. 52941.

To the Honorable Fred King, judge of said court:

The petition of Mrs. Antoinette Thorman, administratrix of the succession of Joseph Fabacher, respectfully shows—

That she desires to file herewith a copy of the protest annexed to and made part of the inventory taken by Arthur B. Leopold, notary public, under order of this honorable court of date October 11, 1897.

Wherefore she prays leaf to file said copy of protest annexed to said inventory, *nunc pro tunc*, as of date November 2nd, 1897.

And for general relief.

(Signed) E. HOWARD McCALEB,
Att'y for Petitioner.

Order.

Let the copy of the protest above referred to be filed, *nunc pro tunc*, as of date November 2nd, 1897, as prayed for.

New Orleans, Nov. 29th, 1897.

[SEAL.] (Signed) F. D. KING, *Judge.*

325 *Protest Handed to Arthur Leopold, Notary, and to Deputy Sheriffs, Annexed to and Made Part of Inventory.*

Succession of JOSEPH FABACHER. No. —.

In the matter of the execution of the writs of sequestration.

Before proceeding with the taking of the inventory by the sheriff in execution of the writs of sequestration and by the notary, Arthur Leopold, under the order dated October 11, 1897—

Charles F. Buck, Esq., attorney-at-law, representing the defendant to the petition of sequestration, Mrs. Magdelena Frey, widow, etc.; Lawrence Fabacher, and the legatees of the deceased, Joseph Fabacher, under his will, protested in their name and declared that the order upon which the sheriff and notary were proseeding was utterly null and void, the court being without jurisdiction in the premises.

That the facts are well known to the pretended administratrix, Mrs. Antoinette Thorman, that Joseph Fabacher at the time of his death was a resident of and domiciled at the State of Wisconsin, city of Waukesha; that he left a will executed under the laws of that State wherein he disposed of all of his property; that its provisions effect a disposal of all the effects contained in the house 1716 Calhoun street; that said will was duly probated and ordered executed and a testamentary executor appointed, all after a full trial and contest over said will by Antoinette Thorman, contestant, the judgment being rendered on September 1, 1897, of the court of proper jurisdiction of said county of Waukesha, State of Wisconsin.

For which reasons the order and proceeding in which same was rendered to inventory the movable property of the deceased, Joseph Fabacher, are absolutely null and void because the court is
326 without jurisdiction *ratione materæ or personæ* to assume any control of the personal property of the deceased or to appoint an administratrix to his estate.

And this protest is made for the purpose of reserving all rights and notifying all parties—the notary, sheriff, and litigants—that their entry into the premises is a forci-le and illegal entry under an order absolutely void for want of jurisdiction, constituting a wrong and trespass for which the right to seek redress is reserved.

And the legatees under the will specially protest upon the further ground that, Joseph Fabacher's estate being solvent, they are the owners of whatever property coming from him may be found in the house.

(Signed) CHARLES F. BUCK, *Att'y.*

I hereby certify that the above and foregoing is a true and correct copy of the protest handed to me, notary, by Chas. F. Buck, Esq., attorney, which is of record and on file in my notarial archives and forms part of the inventory in the succession of Joseph Fabacher; which said protest is annexed to and made part of said inventory.

In faith whereof I hereunto set my hand and affix my official seal of office.

(Signed) ARTHUR B. LEOPOLD,
[SEAL.] *Notary Public, Parish of Orleans.*

327 *Motion and Order to Discontinue.*

Filed November 8, 1897, and entered on the minutes of same date.

Civil District Court, Division B.

Succession of JOSEPH FABACHER. No. 52941.

On motion of E. Howard McCaleb, Esq., attorney for Mrs. Antoinette Thorman (born Fabacher), administratrix of this succession—

It is ordered that the suit herein instituted against Lawrence Fabacher and Mrs. Magdelena Frey Fabacher be discontinued at plaintiff's cost.

We hereby consent to the above, waiving and renouncing all claims growing out of the writ of sequestration issued herein against defendants.

(Signed) BUCK, WALSHE & BUCK,
" H. P. DART, *Att'ys for D'f'd't.*
[SEAL.]

328 NEW ORLEANS, *October 12th*, 1897.

Succession of JOSEPH FABACHER. No. 52941.

Writ of Sequestration.

No. 1716 Calhoun street.

Parlor.

1.	Piano, 1 Pleyel, 1 stool, and cover	$100.00
2.	1 table and cover	6.00
3.	Rocker and three shairs, cane seats	5.00
4.	Carpet on floor	8.00
5.	Fire-screen	.75
6.	1 pair spittoons, porcelain	1.00
7.	3 ornaments on mantle	1.25
8.	1 violin	100.00
9.	Tableau on Wall street	2.00
10.	6 family pictures	2.00
11.	1 glass chandelier	20.00
12.	2 shades and 1 curtain rod	1.00
13.	2 albums	1.00
14.	Music books and music sheets	2.00

Hall and entrance.

15.	Hat rack and mirror	18.00
16.	Marble-top table and linen cover	6.00

17.	Aquarium and fish	3.00
18.	2 cane-bottom chairs	4.00
19.	1 carpet strip, about 35 ft., more or less	10.00
20.	2 wall pictures	1.00
	21. 1 family picture and frame	1.25
329	22. Carpet covering hallway and reading-room	20.00
	23. 1 rattan rocker	1.50
24.	2 cane-seat rockers and 2 chairs	6.00
25.	40 volumes of books, more or less, in book-case	25.00
26.	2 pieces ornaments	.50
27.	1 family picture	.25
28.	1 pair spittoons	1.50
29.	1 picture of L. F. residence, N. O.	.75
30.	1 center table	5.00
31.	1 small jardeniere	.50

Continuation of hall back reading-room.

32.	4 family portraits	2.00
	1 cane-bottom chair	.60
	3 rugs and center oil cloth	1.50

Bed-room next to reading-room.

33.	1 a-moir-	20.00
34.	1 dresser and mirror	12.00
35.	1 wash-stand, furnished	10.00
36.	1 towel rack	1.50
37.	2 cane-seat chairs	1.50
38.	1 bed	25.00
39.	1 marble-top table and mirror	4.00
40.	8 ornements (1 p-ce crystal carved cameo)	12.50
41.	1 family picture, framed	1.50
42.	2 window shades	1.00
43.	1 chandelier	20.00
	44. 1 carpet on floor	8.00
330–340	45. A-moir-, contents consisting of wearing apparel and claimed by F. Fabacher	

Dining-room.

46.	1 extension table	15.00
47.	3 chairs, cane seats	2.25
48.	Sideboard	20.00
49.	16 assorted glasses	1.00
50.	2 silver-plated napkins rings and castor	4.00
51.	Silver mug	2.00
52.	2 tongs, sugar bowl, and 1 butter knife and dish	3.00
53.	Fancy cups and saucers, with stand	1.00
54.	Glass stand and cover and celery urn	2.00
55.	Tray and decanter and 5 glasses and pitcher	2.00
56.	8 pieces on mantle	2.00
57.	2 window shades	1.00
58.	19 silver tablespoons and forks	15.00

59. 1 silver soup ladle 1.00
60. 7 silver teaspoons 2.00
61. Large carving knife and fork 2.00
62. 9 knives and carving knife 1.25
63. 7 linen table cloths 7.00
64. 4 table towels 1.50
65. 2 bottles champagne ..... } 3.00
66. 2 pints Mumm ..... }
67. 1 bottle Curacra 2.50
68. Chandelier, 4 lights 2.50

341 Pantry.

69. 33 glasses, assorted 1.50
70. 1 tea set, 37 pieces 10.00
71. 1 dozen napkins ..... .60
72. 1 refrigerator 6.00
73. 1 chair, cane seat ..... .25
74. 1 lot of agathe ware 1.50

Kitchen.

75. 1 Garland stove and boiler connections 20.00
76. 1 lot cooking utensils 6.00
77. 1 table ..... .50
78. 1 vasselliene, 1 lot chinaware 7.00
79. 1 matal-ic dish-washer 5.00
80. 2 window shades 1.00

Bedd-room next to hall, river side.

81. 1 bed, furnished, maple 40.00
82. 1 a-moir-, maple 40.00
83. 1 dresser and mirror 20.00
84. 1 wash-stand 15.00
85. 2 cane-bottom chairs 1.00
86. 1 table ..... .50
87. 4 shades 2.00
88. 2 pieces lace curtains and window rods 12.00
89. 4 pictures (family) 2.00
90. 1 carpet on floor 10.00
91. 1 towel rack ..... .50
92. 11 lot ladies' apparel in a-moir- .....

342 Room back of preceding.

93. 1 bed, furnished, 1 a-moir-, 1 dresser } maple 150.00
94. 1 rattan rocker, 1 cane-seat chair 2.50
95. Carpet on floor 15.00
96. 4 pictures 2.00
97. 2 window shades and rods 1.25
98. 2 candlesticks ..... .50
99. A-moir-, contains one lot ladies' apparel .....

Bath-room.

100.	Bath-tub, porcelain iron 1 wash stand and bowl 1 Acme heater 1 towl rack 2 chairs 1 strip of carpet, oil cloth 1 shade	60.00

Next bed-room.

101.	1 bed, furnished 1 a-moir- 1 dresser 1 center table	150.00
102.	3 chairs and 1 rocker	3.00
103.	2 shades	1.00
104.	2 family pictures	1.00
105.	1 holy picture	1.50
106.	1 clock	10.00
107.	1 lot ladies' and gentelmen'- wear- apparel in a-moir-.	
108.	1 carpet on floor	15.00

343

Sitting-room.

109.	1 sewing machine and cover (Singer)	15.00
110.	Extension table and cover	6.00
111.	One writing desk and revolving chair	8.00
112.	1 large stove or heater, pipe and screens	25.00
113.	Carpet on floor	15.00
114.	2 chairs and 2 baby chairs	2.00
115.	1 rubber rug	1.00
116.	7 shades	3.50
117.	1 chandelier	2.50

Small room next to dining-room.

118.	1 a-moir-, glass door (oak)	25.00
119.	1 combination bad or folding bed	25.00
120.	1 step-ladder 1 shade	.75
121.	1 clothes rack	.50
122.	2 trunks, with old clothes	

Second story or attic.

123.	6 rugs	3.00
124.	3 chairs	1.00
125.	1 looking-glass 4 empty trunks	1.00

Wash-room.

126.	5 S. irons 1 table 1 board 1 butter churn 1 pair shears 2 sickles	4.00

344 Stable.

127. 1 surrey	50.00
128. 1 garden hose on wheels	6.00
129. 1 wheelbarrow	.50
130. 1 wagon-jack	1.00
131. 1 step-ladder	1.50
132. 1 wooden rake	.50
133. 1 old stove	5.00
134. 1 lot stable accoutrement-: brush, combs, and lanter-s	1.00

Second story.

135. 1 iron bed, furnished, and chairs	3.00

Apprais-ment. Inventory taken October 12th, 1897; premises No. 1716 Calhoun street, New Orleans.

(Signed) A. M. HAYDEL,
Deputy Sheriff.

(Signed) JOHN B. BAYARD.
[SEAL.]

[Endorsed:] No. 52941. Writ of sequestration. Succession of Joseph Fabacher. Inventory taken to be attached to sheriff's return. October 12th, 1897.

345 STATE OF WISCONSIN, }
Waukesha County. }

In County Court.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

On the opposition of Mrs. Antoinette Thormann to probate of will.

Arthur B. Leopold, commissioner, New Orleans, La.

346 STATE OF WISCONSIN, }
Waukesha County. }

In County Court, Wisconsin.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

On the opposition of Mrs. Antoinette Thormann to probate of the last will and testament of Joseph Fabacher, deceased.

Testimony on Behalf of Opponent, Mrs. Antoinette Thormann, Born Fabacher.

Index.

Account New Orleans national bank	67½
Abstract register Touro infirmary	116½
Baltz, Jacob L	72

Bruenn, Bernard 57
Gross, Sam. H. 29
Goldstein, David 114
Gerlach, Rev. Joseph 8
Johnson, Frank L. 102
Keppler, John 60
Kohlman, Dr. William 109
Loeber, Dr. F. 92
Levy, L. 78
Marriage certificate to Jos. Fabacher & Maria Ann Frey . 42½
McDonald, Hugh J. 89
Palfrey, William 66
Roth, Miss Emma 84
Scott, Lee 62
Stipulation to take deposition 120½
Tharp, Henry 14, 114
Thorman, Mrs. Antoinette, opponent 42
Troye, Mathias 15
Torye, Miss Josephine 51
Death-notice advertisement of Jos. Fabacher 103½
Thompson, T. P. 144
Graham, Lewis 135

347 STATE OF WISCONSIN, }
Waukesha County. }

In County Court.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased, Testate.

On the opposition of Mrs. Antoinette Thormann to the probate of the last will and testament of Joseph Fabacher, deceased, testate.

Testimony taken on behalf of Mrs. Antoinette Thormann (born Fabacher) on the opposition to the probate of the last will and testament of Joseph Fabacher, deceased, testate, before Arthur B. Leopold, a notary public in and for the parish of Orleans, duly commissioned and qualified, and therein residing, at his office, room 302 Liverpool & London & Globe building, New Orleans, Louisiana, on Tuesday, June eight, A. D. 1897, at 10 o'clock a. m., by virtue of the annexed stipulation.

348 Appearances: E. Howard McCaleb, attorney for opponent; Henry P. Dart, Charles F. Buck, and T. E. Ryan, attorneys for proponents.

Rev. JOSEPH FRANCIS LAMBERT, being duly sworn on behalf of opponent, testified as follows:

By Mr. MCCALEB:

Q. Father, where do you reside?

A. I reside in the city of New Orleans, corner Louisiana Ave.—No. 3222 Chestnut street, corner Louisiana avenue.

Q. How long?
A. I was born and raised here; lived here all my life, except when I was at college.
Q. Did you know the late Joseph Fabacher?
A. Yes, sir.
Q. How long did you know him?
A. Well, for a couple of years.
Q. Prior to his death—how long before his death did you know him?
A. I could not say; a couple of years, anyhow.
Q. Did you know any members of his family?
A. I do. I knew all of his family.
Q. What are the names of those you know?
A. Well, Mr. Lawrence Fabacher, Mr. Peter Fabacher, Mr. Albert Fabacher, Antoine Fabacher, Louis Fabacher, and his daughter—I forgot her name; she married Mr. Broderick—and there were two younger children, a boy and a girl.
Q. What were their names?
349 A. The youngest, Jacob, and his sister, Lena; that's about all.
Q. What church are you rector of?
A. Our Lady of Good Counsel.
Q. Did any of the Fabacher family attend your church?
A. Mrs. Broderick usually did. I hav-n't seen her for some time, however.
Q. How many of his children attended your church?
A. What children?
Q. Joseph Fabacher's? When Joseph Fabacher resided at the corner of Aline and Prytania streets, name the children.
A. Mrs. Broderick, Lena's father, Jacob, and Alice.
Q. Do you know his grand-daughter, Miss Troye?
A. You mean Pauline Troye. I do.
Q. She married afterwards?
A. She married Mr. Samuel Gross.
Q. In what church were they married?
A. They were married at home by me.
Q. At whose home?
A. Mr. Joseph Fabacher's home.
Q. What school did these children attend?
A. Well, for a while his daughter Lena and the boy Jacob were attending my school, and after they left to go to the Convent Dominican, on the avenue, and the little boy went to free school, I think, for a while, and also to the Jesuits', but I am not sure.
Q. How long ago, do you remember, was it that Miss Fabacher, the grand-daughter of Mr. Joseph Fabacher, was married to Mr. Gross?
A. You mean Miss Troye. A few years ago, three or four years, if I remember well. I performed the ceremony.
350 Q. At Mr. Fabacher's house?
A. Yes, sir.

Q. What school did those young children, Lena and Jacob, attend?

A. I said they attended my school.

Q. Then you had a parochial school in your church?

A. Yes, sir.

Q. When did they attend your school?

A. About four or five years ago; I don't know exactly.

Q. Where did they make their first communion?

A. I think Lena made her first communion at our church; I am not quite sure about it.

A. About how long ago?

A. Well, it must be four or five years ago; I am just giving about.

Q. Did you attend Mr. Fabacher's funeral?

A. I assisted at the ceremony at the church only, at the Jesuit church here, on Baronne near Canal.

Q. About how old a man was he?

A. Mr. Fabacher was a man about seventy.

Q. Where did all the members of his family that you know of reside?

A. They resided with him at the house corner Aline and Chestnut—I mean Aline and Prytania.

Q. Did Mr. Fabacher have a pew in your church?

A. He had at one time; not within the last two years.

Q. How was that pew rented, by the year?

A. Yes, sir.

Q. Mr. Fabacher and his family—did they attend your church for the recent year-?

A. They have not since they left to reside in Calhoun street.

351 Q. Did you attend him in his last illness?

A. Yes, sir.

Q. At the Touro infirmary?

A. I did; I administered him the sacrament of the church.

Q. How long was he sick there?

A. About a week or ten days.

Q. Who was present there at the Touro infirmary when you went to see him there?

A. Mr. Lawrence Fabacher and his wife.

Q. You say for the last two or three years he was a member of your congregation?

A. Yes, sir; that was after *je* left his Prytania and Aline street home and moved in another parish.

Q. You heard his confession before his death?

A. Yes, sir.

Q. And you administered to him the last sacrament prior to his death?

A. He was to undergo an operation, and did not know he would get over it or not.

Cross-examination.

By Mr. BUCK:

Q. Can you fix the date of the marriage between the gran-child of Mr. Joseph Fabacher and Mr. Gross, which you mentioned above?

A. It must be probably four years.

Q. Now, what children lived with Mr. Fabacher?

A. Well, the young ones; those who attended school, and a great many of them are of full age. Some of them are married and
352 have established their own homes in this city and have been independent for ma-y years.

Q. The Touro infirmary is an institution of high reputation as a medical resort?

A. They say it is first class.

Q. It has that reputation?

A. Yes, sir.

Q. Public in its character?

A. As far as I know.

Q. Attended by many of the highest physicians in this city? I mean of high reputation.

A. Yes, sir.

Q. It is located near where Mr. Fabacher lived?

A. Yes, sir; the Touro infirmary is opposite his former residence.

Q. Do you recollect distinctly when he gave up or discontinued his subscription to the pew in the church?

A. About two years ago.

Q. No later than two years ago?

A. I don't think so.

Q. Did he give up expressly——

A. He gave up for the reason that he moved out of the parish and had no further use for the pew.

Q. He passed into another church parish?

A. Yes, sir.

Q. Is that an inference on your part; did he tell you?

A. He may have told me, but such is so.

Q. Where is the church located where you officiate?

A. Louisiana avenue and Chestnut.

Q. Is that close to the residence where the family lived?

A. Couple of squares.

353 Q. And it was natural for them to attend that church?

A. Under the rule, they were bound to attach themselves to that church, according to the spirit of the church.

Q. Were all the family church going people?

A. Yes, sir; they all attended; the children and his wife.

Q. Had been regularly?

A. Yes.

Q. Performed all their duties appertaining to the rites of the church?

A. As far as I know, yes, sir.

Redirect examination.

By Mr. McCaleb:

Q. Father, what parish did he go to after he left your parish?
A. Parish of the Holy Name, commonly called "Little Jesuit on St. Charles avenue opposite Audubon park.
Q. Where was Mr. Fabacher's funeral from?
A. I was told, and which I ascertained from the papers, it w from his residence on Calhoun street; started from there and ca to the Jesuits' church.
Q. In what cemetery was he buried?
A. I don't know; I did not go to the cemetery.

By Mr. Dart:

Q. The Jesuit church from which he was buried is downtow about five miles from the Little Jesuit church, is it not?
A. I can't say exactly.
Q. It is in a different part of the city?
A. Yes, sir.

J. F. LAMBERT, *Rector*

Sworn to and subscribed before me this 21st day of June, A. 1897.

[SEAL.] ARTHUR B. LEOPOLD, *Not. Pub*

354 Rev. Joseph Gerlach, examined on behalf of oppone testified as follows, oath and jurat waived:

By Mr. McCaleb:

Q. Did you know the late Joseph Fabacher?
A. I knew him about four years ago, when I went to adminis him, when I made his acquaintance.
Q. Did you ever vis-t his residence?
A. I did.
Q. How often?
A. I could not say.
Q. Where was his residence?
A. On Calhoun street.
Q. Did you know members of his family?
A. I got acquainted with them. I knew one or two at that ti
Q. State the names of the family that you know.
A. Lawrence Fabacher, Peter Fabacher, and then there were t others; I lost sight of them; I knew them when they were lit boys; they came for instructions from me. There was Tony a Louis and another about 12 or 14 years.
Q. What church are you attached to?
A. Holy Name.
Q. What is that commonly called?
A. The Little Jesuits.
Q. Did Mr. Fabacher have a pew in your church?
A. No; Mr. Lawrence Fabacher had a pew.

Q. Did Mr. Fabacher attend that church?
A. I saw him once or twice.
Q. How long was that?
A. About a year or two ago.
355 Q. When did you last see him at that church?
A. About a year or two ago.
Q. When was it you say?
A. About a year or two ago.
Q. Was it a year or two?
A. I did not pay attention.
Q. Did you know his children Jacob and Lena?
A. Yes; when I had to administer him I met them.
Q. Now, where did Jacob go to school?
A. Well, when he was up there at Calhoun street he was sent to Spring Hill college.
Q. When was that?
A. Some time last year.
Q. Did he ever attend any other school in this city?
A. I think at the Jesuits, downtown.
Q. What school did he attend during the school session of 1895–1896?
A. I can't tell; I do not know anything about it.
Q. Where did he make his first communion?
A. I do not know either; I think he made it at the Baronne Street church.

By Mr. RYAN:

Q. That is only an idea?
A. I had no interest in any one of them.

By Mr. MCCALEB:

Q. Did you know Lena Fabacher, the young lady?
A. Yes.
Q. Where did she attend?
A. Probably at the Dominican convent.
Q. When did you know her at the Dominican convent?
356 A. It was some years back. I do not know exactly. I have a very bad memory to recall dates, especially when I have no interest.
Q. What were the names of Mr. Fabacher's family that attended the Little Jesuit church?
A. Lawrence and Mrs. Fabacher.
Q. Where did Lena make her first communion?
A. Made it at St. Dominican convent, but I am not sure either.
Q. Did you attend the funeral of Mr. Joseph Fabacher?
A. I did.
Q. From what place was his funeral?
A. From the Immaculate Conception.
Q. Did the funeral cortege first come from his residence on Calhoun street?
A. It started from his residence.

Q. Did you go there?

A. I went there and returned with another father, who performed the ceremony; I think it was Father Gaffney or Father Kline.

Q. From what place did the funeral cortege go, to what place after it left the residence?

A. They went to the Jesuit church and then to the cemetery.

Q. Father, is this Little Jesuit church a branch of the Baronne Street church?

A. No; it is by itself; it is *sui juris*; has nothing to do with it; it is not a branch.

Q. How was it that Mr. Fabacher was buried in his own family parish and not from his own parish?

A. I suppose he had to go to the cemetery here, and it was more convenient for his friends.

357 Q. Was that by an understanding between the Little Jesuits and the Baronne Street Jesuit church?

A. Yes, sir; it was determined that he could be buried from the Jesuit here; they had no objection.

By Mr. RYAN:

Q. Is that a general rule?

A. No; they requested us, and we had no objection.

Q. That is the general rule of your order?

A. No general rule of our order; this is local; it may be considered an act of courtesy simply.

By Mr. MCCALEB: Isn't the rule the other way, that a man should be buried in his own parish, by his own parish rector?

A. No.

Q. I ask you if that is not the rule of the diocese?

A. I do not know; for if it is, I do not admit it.

Q. Don't you know it is generally so understood among the clergy of this diocese?

A. They do it.

Q. Yes; marriages and deaths?

A. Well, they sometimes do it to get a fee.

Q. Where was his body interred?

A. I do not know. I went to the graveyard, but couldn't tell you where it was.

Q. Was it not in St. Joseph's cemetery # 2, on Washington street?

A. I really could not tell. I thought it was uptown. I have to see and reflect—but I do not know—let me see—I went to the graveyard straight through to the other side, and I think it must be St. Joseph's, but I could not say positively.

358 Q. Was he buried in a Catholic cemetery?

A. I think it was; it was looked upon as a Catholic cemetery.

Q. Are not all Catholic cemeteries consecrated ground?

A. Sometimes they are; not entirely, but some are, and even in their graveyard there are some portions specially blessed, because

there are so many here in this city, and I pay no particular attention; I attend to my duties and go on.

Cross-examination.

By Mr. DART:

Q. I understand you to say that the funeral passed from one parish in the sixth district to the second district of New Orleans, to another parish, and was then taken to another parish, to Washington street?

A. It was taken—the funeral was brought from Calhoun street to the Jesuit church on Baronne street; then it went to the cemetary, which is still in another parsih; they have their own terms. The St. Joseph cemetary is in a parish in the 4th district, and the Jesuit church lies in another parish than St. Joseph cemetary lines.

Q. Did Mr. Fabacher have a pew in your church?

A. Lawrence Fabacher had a pew in my church.

Q. Lawrence Fabacher has a family?

A. Has a business of his own; keeps house, and has a pew in my church in his name.

Q. Occupied by him and his family?

A. Yes, sir.

Q. And when Mr. Joseph Fabacher came to your church he went to that pew?

A. But I saw him only two or three times.

359 Q. Since the church was established?

A. Yes, sir.

Q. How many years since the church has been established?

A. Five years.

Q. The children of Lawrence Fabacher went to the parochial school?

A. They came to the Jesus infant school on Calhoun street.

By Mr McCALEB:

Q. Were you present at church during the service on Sundays?

A. No. We have three masses.

Q. Then, Mr. Fabacher might have attended church without you se-ing him?

A. He might, but I do not know.

Q. Then you cannot swear whether he went there to a church when you were not there.

A. I did not swear he could not have been there when he was not in the city.

Q. When was he in the city in 1896?

A. I could not tell.

Q. When was he in the city in 1895?

A. He was usually in the city in the months of November, December, and January.

Q. Don't you know that in 1894 he went to Waukesha in June?

A. I don't know anything about that.

Q. Don't you know that in 1895 he went there in May?

A. I don't know about it.

Q. Don't you know he usually returned in October or November?

A. I do not know when he returned to the city.

360 Q. Then you don't know when he was in the city and when he was out of the city?

A. I don't know.

Q. Then you can't tell how long he was in the city at any one time within the past two years?

A. No, sir.

Q. You have a bad memory for dates and locations?

A. It does not concern me. Of cousre, I knew Mr. Fabacher in the capacity to administer the sacrament.

Q. That — all.

J. GERLACH, *S. J.*

ARTHUR B. LEOPOLD,
[SEAL.] *Not. Pub.*

HENRY THARP, sworn and examined on behalf of opponent, testified as follows:

By Mr. MCCALEB:

Q. By whom are you employed?

A. Johnson & Son.

Q. What is their business?

A. Undertakers.

Q. Who conducted the funeral of Joseph Fabacher?

A. Francis Johnson.

Q. Who inserted the notices in the newspapers of the funeral?

A. I don't know.

Q. Who attends to that?

A. Whenever I get a notice I send it down by any of the men. The family usually gives the notices.

Q. Do you reme-ber receiving the notices of his funeral?

A. Don't know anything about it.

361 Q. What position do you occupy?

A. I am simply the collector, and don't know anything about it.

Q. Did you collect the price for his funeral?

A. No, sir.

Q. Have a bill for it?

A. No, sir.

Q. Were you at the funeral?

A. Did not see the funeral.

Q. Did you know Mr. Joseph Fabacher?

A. Not personally.

No cross-examination.

H'Y THARP.

Sworn to and subscribed before me this 17 day of June, A. D. 1897.

ARTHUR B. LEOPOLD,
[SEAL.] *Notary Public.*

MATHIAS TROYE, sworn and examined on behalf of opponent, testified as follows:

By Mr. McCALEB:

Q. Where do you reside?
A. 924 Desire street.
Q. In this city?
A. Yes, sir.
Q. Do you know the late Joseph Fabacher?
A. He was my grandfather.
Q. What country was he a native of?
A. From Germany. I forgot the exact place.
Q. Was he in the full possession of all his faculties as to his hearing, sight?
362 A. No, sir; he did not hear very well.
Q. In what tone of speech did he speak?
A. Very loud.
Q. Where did he live during your childhood?
A. At his home in New Orleans.
Q. At what place in New Orleans did you know him to reside?
A. I knew him to reside corner Prytania and Aline streets a number of years and the- he moved to Calhoun street, after he came back from Waukesha.
Q. Were you present at his funeral?
A. I was.
Q. Where did they first assemble at?
A. At his home on Calhoun street.
Q. Do you remember what was said by any member of the family at the funeral?

Counsel for proponent object to this question on the ground as being irre*val*ent and immaterial as to what any member of the family said.

A. "Papa, we forgive you."
Q. Who said that?
A. I am not exactly sure, but I think it was Mr Lawrence Fabacher.
Q. They said, "Papa, we forgive you"?
A. And they all said, "Papa, we all forgive you."
Q. What did they mean by that?
A. That I could not say.
Q. Do you know where all of the members of his family resided?
A. All in New Orleans, except one. He does not reside in New Orleans; he resides in the country.
363 Q. State how many children he had by his first wife and how many children was born from the second marriage.
A. From the first marriage there was my mother and a son, who is now dead; he died about ten years ago.
Q. Now, how many by the last wife?
A. Well, there was Joe——

Q. Where does he live?

A. Somewhere in the country, in the parish of Acadia.

Q. The next one?

A. Lawrence, Albert, Peter, Tony, Louis, Alice, John, Barbara, Jakey, and Lena.

Q. How many grandchildren did he have?

A. Five—that is, from my father.

Q. Did he have another set of grandchildren with his marriage from Lena Fry, the children of her children?

A. There was, but how many I don't know.

Q. In what State did those children and grandchildren reside?

A. Louisiana.

Q. How old was Mr. Joseph Fabacher at the time of his death?

A. About seventy-two or seventy-three.

Q. When did he first go to Waukesha?

A. I am not positive exactly, but I think in 1892 or 1893; I think it was in 1893.

Q. Was it before or after the exposition at Chicago?

A. I think it was during the exposition.

Q. How long did he usually remain there?

A. Just during the summer months; five months, sometimes six; not longer than six months.

Q. What kind of a place is Waukesha?

364 A. It is a nice summer resort.

Q. Lots of springs?

A. Yes, sir.

Q. What kind of springs?

A. Mineral springs.

Q. Did you ever visit there?

A. I visited my grandfather there very often; every summer. I used to work in Chicago.

Q. About when did he go there in 1895?

A. Some time in May or June, 1895. He generally went away in May or June, and he came back in the fall of 1895.

Q. What month?

A. In October.

Q. Then how long did he remain in New Orleans?

A. From October, 1895, to May, 1896.

Q. Then where did he go?

A. He went to his summer home.

Q. How long did he remain in Waukesha after he went there in May, 1896? When did he return to New Orleans?

A. He returned to New Orleans the latter part of November, 1896.

Q. Where did he live up to the time of his death?

A. At his home on Calhoun street.

Q. Who lived with him at his home on Calhoun street?

A. His wife and his children.

Q. Which children?

A. Jakey was not there this time, because they sent him down to Springhill—they sent him to Springhill all the way from Wauke-

sha here to go to school all by himself; also Lena, and there
365 was Alice—but he was here one day and out another. Johnny was living with one of the other boys.

Q. What school did Jacob attend during the session 1895–1896?

A. Jesuits. He made his first communion at the Jesuits'.

Q. Which one?

A. The Big Jesuits on Baronne near Common street.

Q. When did he go to Springhill?

A. During the fall of 1896 he went to Springhill, and he has been there since. They telegraphed him, "Papa was very sick"—something to that effect—and he came home.

Q. Now, where did Lena go to — in the session of 1895–1896?

A. I could not exactly state. I think the college on St. Charles avenue—the St. Dominican convent.

Q. Now, do you know what members of his family went to Waukesha with him?

A. Lena, Jakey, and the servant. They would bring the servant from here and bring them back again.

Q. Where was Joseph Fabacher's home?

A. New Orleans.

Counsel for proponents object to this question.

Q. Why do you say New Orleans was his home?

A. Because he spoke to me very frequently. When I came back from Chicago I met him on Royal street—I saw him at the restaurant. I said, "Hello, grandpa," and he said, "When did you come back home?" I said, "I came back a few days ago." I said I am traveling on the road, and he remarked that I was too young to be
366 on the road; that I ought to stay at home. I asked him when he got back. He said he had been home a couple of months; that the weather in Waukesha had become very cold. He said he was feeling very sick, and he showed me a belt which he had around his waist. He said he had to keep that on all the time. The doctor told me I would not live until I got home. He used a cane; he always used a cane.

Q. Do you know of anything happening to him last summer while he was in Waukesha?

A. While I was in Chicago Alice Fabacher came up to me at the corner of Ashland Ave. and Milwaukee —, where I was working, and said that grandpa had a fall from the hammock, so I went there to see him, and when I got there he was in bed.

Q. What were his habits about drink?

A. He used to drink plenty.

Q. What kinds of liquids did he drink?

A. Brandy, whiskey, cognac.

Q. Do you know how many drinks he took a day?

A. He took a great many. I drank with him quite often myself.

Q. Did you attend his funeral?

A. I did.

Q. Where was he buried?

A. In his tomb at St Joseph cemetery, # 2, on Washington street.

Q. In whose tomb, you say?
A. In his own tomb.
Q. What inscription was there on that tomb?
A. "Family of Jos-ph Fabacher."
Q. Do you know at what hotel he stayed whilst going to and from Waukesha when he passed through Chicago?
A. At the Leland house, on Michigan avenue and Jackson —.
Q. Do you know how he registered himself at this hotel?
367 A. From my own knowledge, I do not.
Q. How was his house furnished in Waukesha compared with his home here?
A. This home here was a much nicer one. The one in Waukesha was fixed for summer, with screens to keep out mosquitos and bugs.
Q. Summer screens?
A. Yes, sir.
Q. Then he had a crescent in the front of the house. That was the way I was told I could find the house, by the crescent, when I went up there.
Q. Where were his family portraits and photographs kept?
A. Here in New Orleans, at his home on Calhoun street.

Cross-examination.

By Mr. RYAN:

Q. What is your full name?
A. Mathias Troye.
Q. What is your mother's name?
A. My mother's name is Antoinette Thormann. Her first husband, my father, was named Torye.
Q. Is she the contestant in this matter?
A. Yes, sir.
Q. She filed oppositions to the will of Joseph Fabacher?
A. Yes, sir.
Q. You are her son?
A. I am.
Q. What is your business?
A. Clerk.
Q. In what line?
368 A. Gent's furnishing.
Q. Where are you clerking now?
A. I am not working now, but I have plenty of letters to come back to work.
Q. You are not employed at the present time?
A. No, sir.
Q. Where do you live?
A. I live with my mother, 924 Desire street.
Q. You had charge of looking up the evidence in this matter and preparing the evidence?
A. No.
Q. I see you dictating to your counsel.
A. I had no charge of getting up the evidence.

Q. You have been looking up witnesses; reporting them to Mr. McCaleb?
A. I did.
Q. Taking a great deal of interest in the case?
A. I think I ought to.
Q. Where did you live in 1895 and 1896?
A. Lived in New Orleans for a portion of the time. In 1895 I lived here. In August I came back home from Chicago and stayed home until February, 1896; went to Chicago again and came home, and I left here again in February, 1896—no; in March, 1896—and returned home on the first day of February, 1897.
Q. This year?
—. Yes, sir.
Q. You left here in August, 1895?
A. Yes, sir.
Q. At that time Mr. Fabacher was at Waukesha?
A. Yes, sir.
369 Q. And had been there all summer and spring?
A. Just for a few months.
Q. Previous?
A. Just two months before I left; he left here in May or June.
Q. Do you know or are you guessing?
A. I do not know exactly.
Q. Then do you know when he went to Waukesha in 1895?
A. Some time in May or June.
Q. During that time you did not see him?
A. During which time?
Q. The time he left here and went to Waukesha.
A. In 1895?
A. Yes, sir; in 1895.
Q. He was in Waukesha, and I was here a part of the time and also in Chicago.
Q. Now, was he not living in Waukesha with his wife and young children; have his horses there, servants——
A. He only had one horse in New Orleans.
Q. You knew the horses?
A. No, sir; what he used in New Orleans.
Q. Only had one horse; he sold some of the horses——
A. Well, I could not tell you.
Q. But, as a fact, he had other horses?
A. Yes; he had them and sold them. The horse I speak about was the only one he kept here.
Q. Now, did you look around his home at Waukesha to see whether his family portraits were there?
A. I asked for them.
370 Q. What did you ask?
A. Where all the pictures of the family were, and I was told they were home, in New Orleans.
Q. Why did you ask for them; were you preparing then for this case?
A. No, sir.

Q. Will you tell us why you asked him where the family pictures were?

A. Just the same as I would ask grandpa for other things.

Q. Did you ask him for the heirlooms of the family?

A. I did not ask him for all.

Q. Did you look about closely looking for these pictures?

A. I asked for them.

Q. How long were you there before you ask- him?

A. About a day.

Q. Then you asked him about the old pictures of the family?

A. One picture that I saw was here, home, I asked about.

Q. Then it was one particular picture you refer to, and that is the only picture you can remember?

—. I did not see any other pictures there; I doubt it very much.

Q. You doubt it very much if they were there?

A. Yes, sir.

Q. Don't you know that those family pictures were there in that house?

A. I was in the parlor and did not see them; spoke to him about it and looked in the room where the children sleeped.

Q. You might not have seen them?

A. If they were there on the wall, I would surely have seen them.

371 Q. You did not look about, did you?

A. No; I——

Q. Well, if you did not look about for those old pictures, how did you ever expect to find them?

A. I would have seen them there; they would have been hanging on the wall. I surely would not go in the cellar to look for them. My grandpa was very proud of his house, and would take me around and show me everything in the house.

Q. Quite an expensive house?

A. I don't know if it was an expensive one.

Q. Large grounds, shade trees, etc.?

A. Like all summer houses.

Q. It was his own property?

A. I think it was.

Q. Do you know whether this property you speak of on Calhoun street was his property or not?

A. That I could not say.

Q. Then when you say he lived in his home on Calhoun street, do you mean he owns the property?

A. I did not mean that. I simply stated he was living there.

Q. He owned considerable real estate at one time in New Orleans, to your knowledge?

A. He sold all of it, but he could — gotten bigger prices.

Q. He sold it?

A. Yes, sir.

Q. That was before going to Waukesha?

A. While he was going.

Q. While he was going?

A. He came here in 1895 and then sold his properties.

372 Q. You are quite sure of that?

A. I am quite sure; would not say positively.

Q. After he had been going to Waukesha for a few seasons he came back and sold out?

A. I don't — whether he gave them away or sold them.

Q. So he disposed of his properties, and after that he commenced going to Waukesha?

A. Well, he always went there in summer time for his health, he told me, because the waters did him so much good.

Q. Do you know what time he came back in 1895?

A. I don't know exactly; some time in October.

Q. In October, 1895?

A. I think so.

Q. Are you sure of that?

A. I would not say positively; it was beginning of the winter here.

Q. What time did he come back in 1896?

A. I was not here in 1896.

Q. Mr. Fabacher was a naturalized citizen of this country?

Counsel for opponent objects to parole testimony to prove the naturalization of Joseph Fabacher. The naturalization papers are the best evidence.

Q. Was he not?

A. That I could not say.

Q. He voted here?

A. Oh, yes; I think so.

Q. Do you know whether he voted here in 1895, 1896, and 1897?

A. I don't know.

373 Q. Don't you know he voted in Waukesha?

A. I was told so; I don't know from my own knowledge.

Q. Didn't he tell you?

A. No.

Q. You did not ask him that?

A. No.

Q. Do you know what vehicles he had before he moved to Waukesha?

A. Yes; he had a buggy and a barouche. I think he sold the barouche many years ago. He used to go — and from the restaurant in a buggy.

Q That's all the horses and carriages he had when he moved to Waukesha?

A. That'- all I know he possessed.

Q. You say that — all you know of?

A. That is all that I know of.

Q. Don't you know that when Mr. Fabacher sold the house on Prytania street he took that furniture with him to Waukesha?

A. I don't think he took it; he gave it away to his children.

Q. You have been in his home before he went to keep house at Waukesha?

A. Yes, sir.
Q. Are you acquainted with the pieces of furniture?
A. I used to see them, but I don't think I would be able to recognize any of it.
Q. Now, wasn't it the same furniture you saw at Waukesha?
A. It was new furniture at Waukesha.
Q. You are quite sure of that?
A. I am sure of that.
Q. Entirely new?
A. Yes, sir.
374 Q. All new furniture?
A. Yes, sir.

By Mr. McCaleb:

Q. What did Alise tell you about Mr. Fabacher voting in 1896?

Counsel for proponents object on the ground of irrelevancy and immateriality.

Counsel for opponent offers it as against one of the legatees under the instrument offered for probate—offered as against Alise.

A. I had a conversation with Alise, and he told me that the old gentleman voted here in 1896, for Mr. Buck?
Q. In what month?
A. In April, 1896.
Q. And that he voted for Mr. Oharr?
A. Peter got him in a buggy and took him — the poll; that is what he told me.
Q. When did he tell you this?
A. He told me about six months ago.
Q. What did Joseph Fabacher tell you about any of his sons wanting him to stay at Waukesha?
A. He told me Lawrence wanted him to stay in Waukesha, but that Lawrence — had his way long enough and he was going to have his way; that Lawrence wanted him to stay all the time and didn't want him to come home. He said he wanted to buy mama a house, but that he had no money then, and that Lawrence had his money; that he had to go to Lawrence down there and *and* get some money.
375 Q. Were you an inmate of your grandfather's house at one time?
A. I used to live there one time. I used to sleep there quite often in New Orleans.
Q. What did the old man do when bedtime came?
A. He used to go around the house to see if the boys were in, and walked across the house with a candle and a big stick.

MATHIAS TROYE.

Sworn to and subscribed before me this 15 day of June, A. D. 1897.

ARTHUR B. LEOPOLD, *Not. Pub.*

SAMUEL H. GROSS, sworn and examined on behalf of opponent, testified as follows:

Direct examination.

By Mr. MCCALEB:

Q. Mr. Gross, did you know the late Joseph Fabacher?
A. Yes, sir.
Q. How long did you know him?
A. Knew him for about five years; possibly a little longer.
Q. Did you marry one of his relations?
A. Yes, sir.
376 A. My wife is his grand-daughter.
Q. Where were you married?
A. Married in their house on Prytania street.
Q. Where did she reside previous to the marriage?
A. At their house.
Q. Have you any children?
A. One.
Q. How many children, grandchildren, and great-grandchildren did Joseph Fabacher have living at the time of his death?
A. He had twelve children.
Q. How many by the first wife?
A. Two.
Q. But one is dead?
A. Yes, sir.
Q. How many by the last?
A. Ten.
Q. How many children were living with him at the time of his death? Give their names.
A. There is Lena, Jakey, and Alise.
Q. Did you ever visit his house in Waukesha?
A. Never did.
Q. Did you ever visit his house here on Calhoun street?
A. I was in his house on Calhoun street on three different oc-assions.
Q. When?
A. Once on a visit, once on an errend, and another time when he was dead in the house.
Q. Now, what were the names of the members of his family residing with him on Calhoun street?
377 A. Well, there was supposed to be three, I think, Jakey, Lena, and Johnny; whether Alise stayed there or not I could not say.
Q. What time did he go away from here in 1895?
A. The old man?
Q. Yes, sir.
A. The latter part of April or May; I am not sure of that.
Q. What time did he return here in 1895?
A. When?
Q. Year before last.

A. I could not say positively; judge it was in the fall, the beginning of the winter here.

Q. How long did he remain here in the fall of 1895?

A. When?

Q. I mean how long did he remain here after his return from Waukesha in the fall of 1895?

A. He remained here until the early part of May, the fifth, six-, seventh; somewhere about that time.

Q. And then where did he go?

A. He went to Chicago.

Q. And from Chicago?

A. To Waukesha.

Q. And when did he return here?

A. He returned here between the 17th and 21st of November, 1896.

Q. And where did he remain up to the time of his death?

A. His residence on Calhoun street.

Q. In New Orleans?

A. In New Orleans.

Q. Did he have a bank account in this city?

A. Yes, sir; in the New Orleans national bank in this city.

378 Q. How do you know?

A. I used to write his checks for him.

Q. How was his eyesight?

A. Very poor.

Q. Did he read with or without glasses?

A. With glasses.

Q. How was his hearing?

A. Very bad.

Q. In order to make him understand what was necessary for any person talking to him?

A. Talk very loud.

Q. How was his health when he returned here in the fall of '96?

A. Fall of '96; I heard him complain for some time.

Q. What did he say was the reason that he went to Waukesha?

A. For his health in the summer time.

Q. What place did he call his home?

—. New Orleans.

Q. How often did he speak of New Orleans as his home?

A. Well, whenever he spoke of his home he never spoke of any other place or any place else as his home.

Q. Where did all of his children and grandchildren reside?

A. In the State of Louisiana.

Q. How many of them resided in the city of New Orleans and how many resided outside of the city of New Orleans?

A. Well, only one resided out of the city that I know of.

Q. Give his name.

A. That is Joe.

Q. Where did the children attend school—the younger ones?

A. Well, I don't know exactly where Lena went to school.

379 I know she went to Soule; beyond that I don't know.

Q. And Jacob, where did he attend school in 1895 and 1896?
A. I could not answer that. If he went to school at all it was here; never went out of New Orleans.
Q. Where did he have his bank box?
A. In the city of New Orleans, at the New Orleans national bank in 1894.

By Mr. RYAN:

Q. Did he take it out in 1894?
A. Yes, sir.

Mr. MCCALEB:

Q. Where did he keep his valuable papers?
A. Could not tell you.
Q. Do you know of any coming for him by express?
A. Yes, sir.
Q. When?
A. It was the early part of December.
Q. State all you know about —.
A. A notice came to the restaurant that a package had arrived, and the old gentleman sent me to get it. He gave me the money to pay for it.
Q. Where did you go to?
A. Southern express.
Q. Southern or the American express?
A. No; it was the American express, on St. Charles street.
Q. Did you get it?
A. No; they refused to give it to me; they said he must come himself and be identified.
380 Q. Do you remember what the charges were on that package?
A. Two dollars.
Q. How was his home furnished on Calhoun street, in this city?
A. Very elaborately.
Q. Where was he accustomed to visit when he was here—where was his rendezvous downtown?
A. At the restaurant—Fabacher's Bros. restaurant.
Q. What time did he usually come down and what time in the afternoon did he go away?
A. 11 or 12 o'clock; stayed there until 3 or 4 o'clock; sometimes he did not stay so long.
Q. What were his habits in relation to drink?
A. Liked to drink three or four toddies, then would take a nap.
Q. What tone of voice did he talk in?
A. Very loud.
Q. Do you know anything of his watches?
A. He came to the restaurant one day, I don't know the date——
Q. What month?
A. Just before he died in March. He died on the 3rd of March. It was the latter part of February; he had three watches, and I joked with him and asked him for one of them. Well, he kept one

and two were sent to be fixed. The jeweler notified him that there was one over there, which they got after his death.

Q. Who got it?

A. The porter, Louis Phaton, and he turned it over to Peter Fabacher.

Q. Did any people ever call at the restaurant for the old man during his absence?

381 A. Very often.

Q. What was told them?

A. When any one would enquire where the old man was they would say, "He has gone home." Lawrence, Peter, and any one who would happen to be around.

Q. What package did you receive from the old man before he went to the Touro infirmary?

A. Peter received a package there in my presence, and he was anxious to have the same locked in the safe and would not go away until he had seen it locked in the safe, and then he put the key into his pocket.

Q. Was that a package belonging to the old man?

A. Yes; the old man.

Q. What did the old man say when he was about to leave the restaurant in the evening—that is, where he was going to?

A. Going home.

Q. How did he travel to and from his residence on Calhoun street to the Fabacher restaurant?

A. In the cars. I don't know of any particular way. I saw him quite often in the cars.

Q. Anything else that you know about it?

A. No more information than that.

Cross-examination.

By Mr. RYAN:

Q. You are married to a daughter of this contestant?

A. Yes, sir.

Q. A sister of the witness that preceded you?

A. Oh, yes.

382 Q. Where does she reside?

A. In Covington, Ky.

Q. She does not reside in here in this city?

A. No, sir; now now.

Q. Where do you live?

A. My home is in Covington, Ky. I am a traveling man, here one day and out another.

Q. How long have you been traveling?

A. Eight years and four months.

Q. Were you engaged at the restaurant?

A. Short time this winter, about four months.

Q. Commenced when and ended when?

A. The 22nd of November until the 28th of March.

Q. You were employed by the Fabacher Bros.?

A. Yes, sir.
Q. In what capacity?
A. Book-keeper.
Q. You left there after the death of the old man?
A. I did.
Q. On your own account?
A. It was mutual.
Q. You say it was mutual. How do you know? You suggested leaving yourself? You were not discharged?
A. I was not discharged, only I could not exactly fill the place. That was the whole of it.
Q. You testified that you was married to the daughter of the contestant?
A. Yes.
383 Q. This testimony that you are giving today is voluntary on your part for Mr. McCaleb?
A. Yes, sir.
Q. For the purpose of giving all the information you could to help your mother in law?
A. Yes.
Q. Take some interest in her side of this contest, trying to aid and assist her where you could?
A. Yes, sir.
Q. You did not visit Mr. Fabacher at his home in Waukesha?
A. No.
Q. You don't know when speaking of home whether he referred to New Orleans or not?
A. I do not.
Q. When he spoke about going home he was staying in New Orleans?
A. Yes; New Orleans.
Q. It would be then unatural for him to say he was going home here in New Orleans, while in your presence, if he were going to Waukesha?
A. Yes.
Q. You had no familiarity with him at his home or while he lived here, did you?
A. In what way do you mean?
Q. The house on Calhoun street; did you ever visit him?
A. I was never in his house but twice, and during the funeral.
384 Q. When were you married to his grand daughter?
A. On the 14th of November, 1894.
Q. The family was then living on Prytania street, in this city?
A. Yes, sir.
Q. Mr. Fabacher owned his home on Prytania street?
A. Yes, sir.
Q. Do you know whether he owned the place on Calhoun street?
A. I do not.
Q. Don't you know that he owned considerable real estate here and that he sold it?

A. Yes, sir.
Q. That was prior to his going to Waukesha?
A. Since then.
Q. How long was it?
A. I thought he first made his visit in Waukesha five years ago to spend the summer.
Q. That was before the World's fair?
A. Yes; I suppose so. I did not take much interest in it.
Q. How many seasons did he spend there before he sold his property?
A. About two seasons.
Q. Then he came here and sold his property?
A. Yes, sir.
Q. And the- went back to Waukesha?
A. He went there every summer; he went there to spend the summer.
Q. It is a common thing for people of the North to come here and spend the winter because of the difference in climate?
A. Yes.
385 A. It is a common thing for people from here to go north to spend the summer.
Q. I am aware of that fact myself. You say the old gentleman liked his toddy?
A. Yes, sir.
Q. This package you speak of as coming for Mr. Fabacher from the American express, do you know anything about the contents of it?
A. I don't.
Q. Don't you know that it was coupons taken from his bonds?
A. It seems to me that it was something valuable.
Q. They were collectible here?
A. I could not answer that.
Q. You don't know about that?
A. No, sir.
Q. I presume that you have no knowledge that he took to Waukesha his furniture, horses, or carriages?
A. It seems to me that I heard his house was supplied with new furniture.
Q. Well, don't you know that he had a freight car hired for the purpose of carrying away to Waukesha his horses, furniture, and carriages?
A. I don't know.
Q. Mr. Fabacher was not in business for some time?
A. No, sir.
Q. Was he in business at his death?
A. None that I knew of.
Q. How long have you known him?
A. Five years.
Q. When you first got acquainted with him he was out of
386 business entirely?
A. As far as my personal knowledge goes, he was.

By Mr. McCaleb:

Q. Do you know what — the size of Joseph Fabacher's fortune?
A. No.
Q. What was it invested in?
A. Principally bonds.
Q. Do you know the kind of bonds?
A. City bonds.
Q. New Orleans city bonds?
A. Yes, sir.
Q. How many men of his age have you ever known, over 70 years of age, to change their domicil from a place to which they resided for fifty years and where all their family and friends reside and go to another State and among entire strangers?
A. I don't know of any.

Counsel for proponents object.

Q. He was a man of fortune?
A. That I could not say. I have heard it mentioned that he was worth two hundred thousand dollars ($200,000.00).
Q. By whom?
A. In con-ersation; I could not call the names.
Q. Who owns the property formerly owned by Mr. Joseph Fabacher, known as the Fabacher restaurant?
A. Fabacher Broc.
Q. And the real estate?
A. Which real estate?
387 Q. The restaurant.
A. The Fabacher Bros. No; I think Mr. Lawrence Fabacher.
Q. Do you know who purchased his property uptown?
A. Once piece—that is, his home on Prytania street—that was sold to his son-in-law, Mr. Broderick.
Q. Then, when he sold out his real estate here, most of it was purchased by his sons and son-in-law?
A. Some members of the family.

By Mr. Dart:

Q. Do you know the son-in-law, Mr. Broderick?
A. Yes, sir.
Q. He is a business man?
A. Yes, sir.
Q. Does a large business?
A. I don't know.
Q. He married whom?
A. Mr. Fabacher's daughter.
Q. You don't know, in testifying to a question of Mr. McCaleb's, that the property on Calhoun street was sold out at the same time?
A. That probably was sold out in 1894.
Q. In answer to Mr. McCaleb, you say you heard that his property was sold out at once and bought in by the family?
A. I refer to the buildings. The restaurant was bought in 1894.

Q. Is it not a fact that the old man Fabacher had this property put up at auction, advertised it, and so on?
A. That is the first I ever heard of it.
Q. The property on Prytania street?
A. None of it.
Q. Never advertised for auction?
388 A. I never saw or heard of it.

S. H. GROSS.

Sworn to and subscribed before me this 17 day of June, A. D. 1897.

ARTHUR B. LEOPOLD,
[SEAL.] *Notary Public.*

Mrs. ANTOINETTE THORMANN, sworn and examined on her own behalf, testified as follows:

Direct examination:

Q. How old are you, Mrs. Thormann?
A. Forty-four.
Q. Where were you born?
A. In New Orleans.
Q. Who was your father and who was your mother?
A. My father was Joseph Fabacher; my mother was Maria Ann Frey.
Q. When were your father and mother married?
A. In 1850.

Counsel for opponent offers in evidence the marriage certificate from St. Mary's church, on the 13th day of May, 1850, signed by Joseph Fabacher, Maria Anna Frey, and P. Petesch, priest, and Jacob Yost and Xavier Burdig, witnesses.

Q. Of what country were your father and mother natives?
A. My father was from Busenberg and my mother from Rosenbauer, Germany.

389 No. 108. ST. MARY'S CHURCH, *June 26th*, 1894.

On this 13th day of May, in the year 1850, having —— —— and being authorized by license of —— ——, I did join in the bonds of matrimony, according to the rites of the Holy Catholic church, Joseph Fabacher, a native of Bavaria, son of —— —— and of —— ——, with Maria Anna Frey, a native of Gallia, daughter of —— —— and of —— ——, in presence of the undersigned witnesses.

Parties: JACOB FABACHER.
(Signed) MARIA ANNA FREY.
(Signed) P. PETESCH, *Priest.*

Witnesses:
(Signed) JACOB YOST.
XAVIER BURDIG.
[Seal of Church.]

True copy. Pro ROBERT, *Sr.*

390 Q. Where were your father and mother married?
A. St. Mary's church, Josephine street, New Orleans.
Q. Did your father ever tell you how old he was when he came to New Orleans?

Counsel for proponents object. The witness is the contestant, and a statute of Wisconsin forbids a party testifying to transactions or communications with a deceased person under whom he or she claims title.

A. My father never told me.
Q. How far back can you remember your father; how old were you when you remember him first?
A. I always did remember my father.
Q. Where did your father and mother live when you first remember?
A. Where they lived. I was born on 7th street. Then he kept a wood yard on the Levee street. I was about five years old at that time.
Q. How many brothers and sisters did you have?
A. How many I had? One brother; he died about ten years ago; his name was Andreas.
Q. Did he leave any children?
A. No, sir.
Q. To whom were you first married?
A. To Mathias Troye.
Q. When?
A. In 1870.
Q. Were your father and mother living together then?
A. No, sir.
Q. Do you know when they first separated?
A. In 1863.
391 Q. With whom did your father go and live with after he separated with your mother?
A. With Magdalena Frey.
Q. Who was Magdalena Frey?
A. Her sister—her right sister.
Q. When did she come from Germany here?
A. That I can't say. I know she was a servant for my mother.
Q. Well, now, where did your mother go after your father and mother separated?
A. My mother went to Germany.
Q. How long did she stay there?
A. How long?
Q. About how many years.
A. I can't remember that.
Q. Is she living still—where?
A. In Genoa, Nevada.
Q. How many children did your father have by Magdalena Frey?
A. Eleven children.
Q. What were their names?

A. First Joseph, Lawrence, Tony, Louis, Peter, Barbara, Johnny, Alice, Albert, Lena, and Jakey.

Q. Do you remember when your father and mother were divorced in 1874?

A. Yes, sir; I remember that.

Q. Was your mother afterwards married?

A. About a year after.

Q. When did your first husband die?

A. In 1890.

Q. How many children did you have by him?

A. Five.

392 Q. Are they all living?

A. Yes, sir.

Q. What are their names?

A. Pauline, Mathias, Joseph, Josephine, and Mary.

Q. How many of them are married?

A. One; she married Mr. Gross.

Q. At whose house were they married?

A. At her grandfather's house.

Q. Your father's house?

A. Yes, sir.

Q. How long did your daughter live with him?

A. Living with him about three years.

Q. Before her marriage?

A. Yes, sir.

Q. How long do you know your father — living here in New Orleans before his death?

A. I always knew that he lived here all the time, because it was his home.

Q. To what religion did he belong?

A. Catholic.

Q. Where was he buried?

A. In St. Joseph's cemetery # 2.

Q. In whose tomb?

A. In his own tomb.

Q. What inscription is on that tomb?

A. "Family tomb of Joseph Fabacher."

Q. Where did he tell you that he desired to be buried?

Counsel for proponent object to witness stating what was told her.

393 A. He wanted to be buried in New Orleans.

Q. When did he tell you that?

A. He told me the last time when he came back home.

Proponent makes the same objection.

Q. When did he come back last?

A. When he came back last? In the commencement of December.

Q. What did he tell you when he came back home?

Same objection.

A. Well, he came back home, and I said, Papa, are you going to buy me another place? He says he has no money; that he was broke; he had to go to Lawrence and ask for money.

Q. Did you hear any one speak to him about leaving Waukesha—any of his children?

A. Leaving Waukesha?

Q. When he come back?

A. Oh, he always wanted to come back; he went over there for the summer and never wanted to stay there.

Q. About how old a man was your father at his death?

A. 72.

Q. What was the condition of his sight and hearing?

A. He heard pretty bad; his eyesight was a little better than before.

Q. Did he use glasses in reading?

A. I don't believe that he used glasses the last time.

Q. What was the condition of his health the last time?

A. His health was bad.

Q. What did he tell you about his health?

Proponent makes same objection.

394 A. He told me his *his* health was bad. He said that he didn't think he could reach New Orleans; that he was sick; that he fell out of the hammock. I said, "Papa, you come back again;" he said, "Yes; I thought I couldn't reach home to see you again." I said, "What is the matter?" and he showed me what he had around his stomach; he made me put my hand there and showed me.

Q. It was a bandage?

A. Yes, sir; he — a kind of belt around there and I put my hand in it.

Q. Where were his children Lena and Jacob sent to school?

A. Sent to school here in New Orleans.

Q. Where were you accustomed to meet and see him?

A. Always at the restaurant, because when I wanted to see him he said he did not know what time he would be at home; that I should go to the restaurant.

Q. Where do all of his children that you mention he had by Magdalena Fry live?

A. All here except Joseph.

Q. Where does he live?

A. In St. Landry parish; no, I mean in Acadia.

Q. Were you ever at his house on Calhoun street?

A. Yes, sir.

Q. When and how often?

A. Once.

Q. Before his death?

A. No; at his funeral.

Q. How long before his death was he removed to the Touro infirmary?

395 A. How long before his death? Seven days.

Q. After he went there?
A. Yes, sir.
Q. What physician was attending him there?
A. Dr. Loeber.
Q. Did you see any priests there?
A. No.
Q. How often did you visit him while at the Touro infirmary?
A. I used to go every day.
Q. When did your first husband die?
A. In 1890.
Q. When were you married to your present husband, Mr. Thormann?
A. In 1891.
Q. When did your father first go to Waukesha?
A. About five years ago.
Q. How long was he accustomed to stay away from New Orleans?
A. Only went there in the summer time for his health.
Q. And where was he during the latter part of the past winter and spring?
A. Here in New Orleans, his home.
Q. When were you and your brother sent away to Germany?
A. In 1863 he made my mother leave.
Q. How long did you remain out there in Germany? A. How long did she remain in Germany with you and your brother?
A. Six years.
Q. What place did you stay at while you was there?
A. Straussburg.
Q. You were there with your mother?
A. Yes, sir.
396 Q. Who supported you while you were there?
A. Nobody; only the rent that my mother took it.
Q. You said you stayed there seven years?
A. No; six years; then I came and my father come back. He was going to put me in a convent to learn me how to sew.

Proponents make same objection.

Q. What business was your father engaged — before his death?
A. Before his death he did not do any business at all. He lived off the interest of his money, so he told me.

Same objection.

Q. How many years did he have no business before his death?
A. Before his death, I could not tell you. I think he gave it up in 1890.
Q. Well, before 1890, what did he do?
A. Well, in the restaurant business and in the grocery business. He had a plantation in St. Landry.
Q. Who got the plantation in St. Landry?
A. Now, I don't know.
Q. Who has the restaurant?

A. Lawrence Fabacher & Brothers.
Q. Was he carrying on that restaurant in 1884?
A. Yes sir.
Q. Do you remember when we had the Cotton Centennial Exposition here?
A. I can remember, but I don't know what year.
Q. In 1884, was he carrying on that business then—the restaurant business?
397 A. Yes, sir.
Q. What was your husband's first name?
A. Mathias Troye.
Q. Did he ever work there?
A. When they first opened up they promised to give him a position as cashier. He worked there a couple of months, but he could not stand it.
Q. Was your father a free drinker; was he temperance or intemperance?
A. My father was a drinker.
Q. What was he accustomed to drink?
A. Best of liquors.
Q. Did he drink seldom or frequently?
A. Often.
Q. What is the name of your mother's last husband?
A. Joseph T. Schick.

No cross-examination.

MRS. ANTOINETTE THORMANN.

Sworn to and subscribed before me this 16th day of June, A. D. 1897.

[SEAL.] ARTHUR B. LEOPOLD,
Notary Public.

398 Miss JOSEPHINE TROYE, sworn and examined on behalf of opponent, testified as follows:

By Mr. McCALEB:

Q. What is your name?
A. Josephine Troye.
Q. Did you know the late Joseph Fabacher?
A. He was my grandfather.
Q. How long can you remember him, about?
A. How long? I am eighteen; as long as I can remember.
Q. What place did he live before his death?
A. On Calhoun street.
Q. Did you ever visit his house there?
A. I did.
Q. Do you remember when he lived here in 1895—year before last?
A. Do I remember when he lived here? Yes, sir.
Q. What month was it?

A. I can't exactly reme-ber what month. He generally left in May or June.

Q. What time did he return here in 1895?

A. I can't remember; October or November, I am not sure.

Q. Did you ever visit his home on Calhoun street?

A. Yes, sir.

Q. Who lived there with him?

A. Lena, Jakey, and their mother.

Q. Where did Lena make her first communion?

A. At Fathers Lambert's church.

Q. How long ago?

A. I can't exactly remember.

399 Q. About how many years ago?

A. Five years ago.

Q. Where did she go to school?

A. At the Magnolia school, a public school, Farther Lambert's school, St. Dominican convent, and Soule.

Q. Where did she go to school in 1895 and 1896—year before last?

A. I remember las- she went to Soule from the St. Dominican convent, and last year she went to Soule.

Q. Where did Jakey make his first communion?

A. At the Jesuits.

Q. On Baronne street?

A. Yes, sir.

Q. Where did he go to school in 1895 and 1896?

A. I know he went to the Jesuits and Springhill college.

Q. When did he first go to Springhill college?

A. Just lately.

Q. Before that he went to the Jesuits?

A. Yes, sir.

Q. Were you often at your grandfather's residence?

A. I was working, and could not go often.

Q. Where were you working?

A. At Fabacher's restaurant.

Q. When did you cease working there?

A. When I was discharged, on May 5th.

Q. Why were you discharged?

Proponents object.

A. On account of this case, in a very rude manner.

400 Q. Who discharged you?

A. Mr. Lawrence Fabacher.

Q. How long had you been working there?

A. Four years in May.

Q. Where was your grandfather accustomed to go when he was here in New Orleans?

A. He would go to Hufft's. He would come to the restaurant every day.

Q. About what time did he come down to the restaurant?

A. 11 o'clock; stayed there until between two and three o'clock; sometimes later.

Q. What did he drink while he was at the restaurant?
A. I do not know. I can't say what he drank, exactly.
Q. How often was he accustomed to drink while there?
A. I don't know, because I always was in the gentlemen's department.
Q. How was his sight and hearing?
A. Very bad.
Q. His hearing——
A. Very bad; we had to holler at him.
Q. How did you talk to him—in what tone of voice: loud or low?
A. Very loud.
Q. Did you ever hear him say where his home was?
A. Yes, sir.
Q. Under what circumstances, and when?
A. He used to say when it got warm down here that he was going to Waukesha, and when it got cold he had to come back here. He said he could not stand the cold up there and had to come to New Orleans. The—when he was at the restaurant he would say
401 he was going home. Whenever he left the restaurant he would speak about going home.
Q. How is that house furnished on Calhoun street; well furnished?
A. Yes, sir.
Q. How many rooms in it?
A. Can't say exactly; I think eight rooms.
Q. What did Mr. Lawrence say when he discharged you?

Proponents object.

—. He called — to him, and I went to him; then he took me into his private office, and he told me to close the door, and he told me my mother was doing wrong in going to court; that God would punish her; that he was a just man; that she broke the fourth commandment; that through him mamma got that house; that he spoke to grandpa and said: "You should give her that; she needs it." He means the house we are living — now.
Q. Did any bills come to the restaurant for Mr. Joseph Fabacher?
A. Yes, sir; there was some came when he was in Waukesha, and they said when he would come home they would pay them, and there were others that come while he was in New Orleans, and they would say he had not come from home yet.
Q. Who was it that would say that?
A. Mr. Peter, Mr. Tony Fabacher.

Cross-examination.

By Mr. RYAN:

402 Q. How old is Miss Lena?
A. Lena was eighteen in February.
Q. All these schools that you mentioned, they are Catholic institutions?

A. Yes; except Soule.
Q. They are not public schools?
A. Yes; the Magnolia school is a public school.
Q. She attended there when she was young?
A. Several years ago.
Q. Later she attended these private colleges, did she?
A. Yes, sir.
Q. This Springhill, is that a Catholic institution, is it not?
A. Yes, sir.
Q. Higher education there?
A. I think so.
Q. It is a college for higher education in the State of Alabama, six miles from Mobile, a Catholic college? It is of a private character?
A. Yes, sir.
Q. You have attended school with Lena for many years?
A. Never attended with Lena.
Q. You said that Lawrence told you that it was through him that your mother got that house and lot?
A. Yes, sir.
Q. Did your grandfather give it to her?
A. He gave it to us children.
Q. The title to that property is in you; for how many years have you had it?
A. Five years.
403 Q. That is where you live now?
A. We are living there three years.
Q. He was selling his property that he owned her- about that time?
A. Yes, sir.
Q. He owned several houses and lots here?
A. Yes, sir; my grandfather owned lots of property.
Q. And he had sold them at public auction at that time?
A. I don't remember that. I did not see it in the papers.
Q. You never visited him at Waukesha?
A. Never up there; no, sir.
Q. You say his home was on Calhoun street?
A. Yes.
Q. That is where he lived here in the city, and when he was going downtown did he say he was going downtown or going home?
A. He said he was going home. He always told me he was going home.
Q. Did he tell you every day?
A. He would speak to the cashier and say—that is, in the ladies' department—that he was going home.
Q. How long or what was the last time that he said anything about that?
A. About a month before his death.
Q. What did he say that day?

A. He said, "I can't make any money around here"—he was joking—that he'll guess he will go home.

Q. Was that what he said?

A. Yes.

Q. That is the substance — what he said to the cashier
404 when he was going?

By Mr. McCaleb:

Q. When you visited his house on Calhoun street, did you see anybody or people there?

A. His family.

Q. These people or visitors you saw there, were they all of his family?

A. Yes.

Q. Who did you see there?

A. Ah, saw Lawrence and Peter, Tony, Louis, in fact Albert, the whole family; also Barbara, Lena, Jakey.

Q. Were there any other parties at the house you saw?

A. I cannot say; there were some others; I did not take notice of them.

Miss JOSEPHINE TROYE.

Sworn to and subscribed before me this 16th day of June, A. D. 1897.

ARTHUR B. LEOPOLD,
Notary Public.

Bernard Bruenn, sworn and examined on behalf of opponent, testified as follows:

By Mr. McCaleb:

Q. Mr. Bruenn, where do you reside?

A. New Orleans.

405 Q. What is your profession?

A. Attorney-at-law.

Q. Did you know the late Joseph Fabacher?

A. I knew him by sight.

Q. Were you ever present when he had a conversation with you or anybody else in relation to his visit to Waukesha?

A. Well, that was several years ago. I recollect upon one occasion I was coming up Royal street, with a gentleman with whom he was very well acquainted, a Mr. Bruno, of New York, and Mr. Fabacher was standing in the entrance to the restaurant on Royal street, and this Mr. Bruno stopped to chat with him; they spoke in German——

Q. Could you understand?

A. Understand German thoroughly; and Mr. Bruno asked Mr. Fabacher how he was feeling, and Mr. Fabacher said he was feeling very well; that he was waiting very anxiously for the winter to become sufficiently mild in Waukesha, as he wanted to go there for the summer; that he found the water did him so much good. He

stated in reply to a question from this gentleman, Mr. Bruno, that he was very comfortably fixed there, had his own house there, and was so pleased, and how he enjoyed riding and driving; that is all I recollect.

Q. What did he say about the winter there?

A. There was no discussion.

Cross-examination.

By Mr. DART:

Q. When was that, Mr. Bruenn?

406 A. Possibly in 1890 or 1891; in the spring of 1891. I left for Europe in May, 1891, and did not return until the fall of '94.

Q. Was it before or after you went to Europe?

A. It was before.

Q. When was Mr. Bruno here since?

A. He was here in November, 1896, and left January, 1897.

Q. That was on his last visit to New Orleans?

A. No; the conversation was had a year prior to my departure for Europe. I left in May, 1891.

The witness who testified above made the following correction to his testimony given on yesterday, June 8th, 1897, in the presence of Messrs. McCaleb (for opponent) and Dart, Buck and Ryan (for proponents) and with their consent and approval, as follows:

Mr. Bruenn, who wa- sworn yesterday and who stated the following conversation having occurred between the late Joseph Fabacher and a Mr. Bruno, now of New York city, which conversation occurred in his presence, as he then stated, in the latter part of 1890 or the early part of 1891, was an error as to the date on his part; he now desires to correct that statement as to that date, and wishes to make a note to the effect that, upon reflection, he is positively certain that the conversation could not have occurred at the date he stated on yesterday, but is equally positive and certain, after such reflection, that the conversation certainly occurred in the presence of the late Mr. Joseph Fabacher on Royal street between the first and tenth days of May, 1894, at which time the said Mr. Bruno was in New Orleans, together with the witness.

BERNARD BRUENN.

Sworn to and subscribed before me this 15th day of June, A. D. 1897.

ARTHUR B. LEOPOLD, *Not. Pub.*

407 JOHN KEPPLER, sworn and examined on behalf of opponent, testified as follows:

By Mr. MCCALEB:

Q. Mr. Keppler, where do you live?

A. 919 Desire street, near Burgundy St., at New Orleans.

Q. How long have you lived here?

A. All my life.
Q. Did you know the late Joseph Fabacher?
A. I did.
Q. How long did you know him?
A. I know him since 1890, 1891, if not longer; sure since 1891.
Q. How often were you accustomed to see him?
A. After the time I worked uptown I used to see him every day, sometimes two or three times a day.
Q. Where did he get shaved?
A. He used to get shaved up at Joe Him.
Q. During what years?
A. He used to get shaved there before I knew him. I have been shaving him since 1891 or 1892. I shaved him during 1891, 1892, 1893, and a part of 1894.
Q. Where was his home, and where did he live when you knew him?
A. I always knew and he always claimed this to be his home.
Q. Did you hear that from him?
A. Yes, sir; personally.
Q. When did you last see him and talk to him?
A. I have seen him within a year ago; I suppose about seven or eight months ago. The last time I spoke to him that was on Canal street, that time he was looking for an occulist, an eye doctor.
408 Q. Did he speak about his home at all?
A. He asked how I was and what I was doing.

Cross-examination.

By Mr. RYAN:

Q. You did not shave him after 1894?
A. I might have shaved him later than 1894.
Q. Do I understand you to say the latter part of 1894?
A. Perhaps somewhere around that.
Q. You mean to say that you shaved him during the summer of 1894?
A. When?
Q. During June and July, 1894.
A. I could not say exactly. He would stay here until the weather got warmer and would spend the summer in Waukesha.
Q. Prior to 1894?
A. Yes, sir; I shaved him during 1891, '2, '3, and 1894.
Q. You had no conversation with him subsequent to 1894?
—. Yes, sir: I told you I saw him on Canal street, and he was glad to meet me and asked how I was.

By Mr. MCCALEB:

Q. Did he tell you when he got back?
A. No; I never asked him.

JOHN KEPLER.

Sworn to and subscribed before me this 14th day of June, A. D. 1897.

ARTHUR B. LEOPOLD,
[SEAL.] *Notary Public.*

409 LEE SCOTT, sworn and examined on behalf of opponent, testified as follows:

By Mr. MCCALEB:

Q. Where do you live?
A. In this city.
Q. Did you know the late Joseph Fabacher?
A. I did.
Q. What is your position—I mean your business?
A. Clerk in a clothing store.
Q. How long did you know Joseph Fabacher?
A. I met him in August, 1895, at Waukesha, in company with Mr. Mat. Troye.
Q. Did you visit him at his residence?
A. No; on the street, near the Fountain house.
Q. Do you know where his room was during the time that you knew him?
A. Well, sir, Mr. Troye and I had a conversation with him and asked him in my presence when he was going to leave for home. He said when the weather got colder.
Q. When was that?
A. In August, 1895.
Q. When did you see him since?
A. I met him several times in New Orleans after, but never had any conversation with him, but in February I was in company with Mr. Troye; we were going into the restaurant, and we met Mr. Fabacher. Mr. Troye addressed him, saying, "Hello, grandpa; when did you get back home?" and he replied, "I came
410 back a few months ago," and he wanted to know from Mr. Troye what he was doing, and he said he was traveling for a Chicago firm; that he represented a clothing-house, and the old gentleman said that Mr. Troye was too young to travel; that he had lots of time yet and should remain at home. Mr. Troye said, "I am young in years, but could make an honest living." I told Mr. Fabacher that my firm was going to buy some goods from the house Mr. Troye represented. Mr. Troye asked how he was feeling, and he replied, "I don't feel well," and I said, "You don't look like a sick man," and he replied, "Look what I have to wear," and pointed to a bandage which he had around his waist—a sort of suspensory. I then left him standing there and went away.
Q. Did you hear him say anything about his home after August, '95?
A. Well, Mr. Troye asked him if he was going to Waukesha and he stated no; that he would stay at home this summer, in New Orleans; that he was feeling too bad.
Q. When was that?

A. I think in the early part of February, this year.
Q. This year?
A. Yes, sir; February, 1897. Mr. Troye had just returned from Chicago, and I don't know the correct date.

Cross-examination.

By Mr. RYAN:

Q. What other hotel do you know in Waukesha?
A. That's all.
Q. How did you get there?
411 A. We went there on a boat; it was my first visit there; I went in company with several friends.
Q. Can you tell me the time?
A. It was late in the evening. We went back to Milwaukee and took the boat that night.
Q. You saw Mr. Fabacher near the Fountain house, you say, on foot?
A. He was walking.
Q. On what train did you go to Waukesha on?
A. We went on the steamer across the lake to Milwaukee, when he took the train to Waukesha.
Q. What *raod*?
A. I can't remember.
Q. Now, aren't you mistaken about meeting the old man in front of the Fountain house?
A. Near the Fountain house.
Q. How do you know it was the Fountain house?
A. I was told so. My old boss, the man who I used to work for, Mr. Pokony, stayed there with his wife and daughter there at Waukesha.
Q. Is it a stone or brick house?
A. I don't remember.
Q. Large trees, very pretty place, a fountain in front?
A. My first visit there; it was late in the evening. How can I tell all that?
Q. Do you mean to say that there was a fountain in front or behind it—which?
A. I don't remember.
Q. About how near the Fountain house did you see the old man?
412 A. About a half a square from the hotel.
Q. Were there some stores there?
A. I can't say.
Q. Along the square that you met him was it filled up?
A. Look like residences to me.
Q. Don't you know there are no buildings near the Fountain house?
A. Not right in front of the building, but I know sure I went there and spoke to Mr. Pokorney, who I worked for. He was then staying there at the Fountain house with his wife and daughter.

Q. How did you come to remember that conversation; why should you remember?

A. I don't know why I should?

Q. How did you come to testify in this contest—did Mr. Troye talk to you—and how did you come to tell it since?

Q. No one; only I received a subpœnae, and when I met Mr. Troye I asked him about it and we refreshed our minds about it.

Q. Were you subpœnaed before you said anything about it?

A. I read the subpœna and spoke to Mr. Troye about it.

Q. Before that you said nothing about that conversation?

A. Never mentioned it to a soul.

Q. After you had been subpœnaed then you asked?

A. Then I saw Mr. Troye and he asked if I remember when we were together going into the restaurant at Fabacher's, and when we spoke to him about Waukesha——

Q. I am speaking about the conversation at Waukesha.

A. He asked me if I remember that and I said I did.

Q. He suggested all the conversation and you said you did. Then you are testifying from the suggestion made to you?

413 Q. No; they are facts. There are lots of other facts, but I remember this well.

By Mr. BUCK:

Q. What time in January was this conversation?

A. It was during the month of February.

Q. Fix the date.

A. It was about the first or second week in February.

Q. Are you intimate with the Troey family?

A. I know his mother and him personally. The young lady—I used to meet her at the restaurant.

Q. How often?

A. Not often. I used to go in the ladies' department about two or three times a week.

Q. Visit his house?

A. Yes, sir.

Q. Recently?

A. No.

Q. How often were you there?

A. Once.

Q. When was that?

A. New Year's day.

Q. Not since?

A. No, sir.

LEE R. SCOTT.

Sworn to and subscribed before me this 14 day of June, A. D. 1897.

ARTHUR B. LEOPOLD, *Not. Pub.*

WILLIAM PALFREY, sworn and examined on behalf of opponent, testified as follows:

By Mr. McCALEB:

Q. Mr. Palfrey, where do you reside?
A. In New Orleans.
414 Q. How long have you lived here?
A. Sixty-two years.
Q. Did you know the late Joseph Fabacher?
A. Yes, sir.
Q. How long did you know him?
A. Several years back; don't recollect how long; certainly four or five years.
Q. About how often did you see him and when?
A. Very frequently. He would come to the bank.
Q. Mr. Palfrey, what is your position?
A. Cashier of the New Orleans national bank.
Q. Did Mr. Joseph Fabacher have an account in your bank?
A. Yes, sir.
Q. Can you give us a duplicate of that account?
A. Yes, sir (witness producing copy of account).
Q. This account, from May 6th, 1896, to February 27, 1897—is that right? Look at it.
A. (Witness reading from account:) It runs from May 6th, 1896, to March 1, 1897.
Q. Don't that account show the amounts deposited and the amounts withdrawn during that time?
A. That account is taken from the books. Mr. Salaun is the book-keeper.
Q. Do you know if that account is correct, Mr. Palfrey?
A. Yes, sir.
Q. Did Mr. Joseph Fabacher ever have a bank box in your bank?
A. Yes, sir.
Q. When and where was it withdrawn?
A. Delivered to him in person November 1, 1894, bank box No. 149.

415 Please examine and report at once.

Joseph Fabacher in account with the New Orleans national bank.

Dr.				Cr.		
1896.				1896.		
May 6.	To c'k	4,100		May 5.	By dpt	12,438.26
"		59.25		Nov. 27.	dpt	1,100
"		300				
			4,459.25			
7.		6,150				
"		60.80				
"		75				
			6,285.80			
8.		228				
"		1,000				
"		88.25				
"		95				
			1,411.25			
9.			133.90			
June 12.			150			
	Balance		1,098.06			
			13,538.26			13,538.26
1896.				1896.		
Nov. 30.	C'k		130.75	Nov. 27.	Balance	1,098.06
Dec. 4.		14.95		'97.		
"		100		Jan. 7	Dpt	1,000
			114.95	'97.		
9.			100	M'ch 1.	Dpt	11.54
14.			100			
23.			12.50			
24.			100			
'97.						
Jan. 5.			50			
7.		100				
"		21.70				
			121.70			
10.			793.50			
19.			82.80			
20.			50			
416						
Feb. 2.			14			
3.			19.30			
4.			50			
12.			5.10			
27.			3.16			
			2,109.60			2,109.60

417 Counsel for opponent offers the account of Joseph Fabacher with the New Orleans national bank in evidence.

Cross-examination.

By Mr. Ryan:

Q. Is it customary for people of the North to winter down here in New Orleans?

A. Yes, sir.

Q. Some people open accounts in your bank?

A. Sometimes they do.

Q. Sometimes they carry money?

A. Sometimes they bring exchange; they deposit it and we give them credit, and they can use it as they call for it.

Q. By check?

A. Yes, sir.

Q. This don't seem to be an extended account?

A. Not very.

Q. The last check is for overdrawing his account?

A. Eleven dollars and fifty-four cents; yes, sir.
Q. His account would indicate about five extensions?
A. Yes, sir.
Q. I notice it don't indicate any transactions during the months of June, July, August, and September, except one I see here dated June 12th, 1896. That is right, isn't it?
A. Yes, sir.

418 Redirect examination.

By Mr. McCaleb:

Q. Mr. Palfrey, have you a book in which you enter the names and residences of your depositors?
A. Yes, sir. If a man leaves his signature, we take his address for the purpose of communicating with him in case we want to see him.
Q. Can you tell us by looking at your signature book whether the name of Joseph Fabacher appears thereon and his address?
A. I think very likely; we usually take their signature and their addresses.
Q. Was he one of your northern birds to winter here?
A. I never regarded him as such. I regarded him as an old citizen.
Q. How did you know him, as a citizen or as a visitor here?

Counsel for proponent object.

A. I knew him as a citizen.
Q. Can you find his name and address on your signature book?
A. I think so.

By Mr. Ryan:

Q. Suppose he stopped at the St. Charles hotel, in this city, and he opened an account in your bank and gave you his signature and residence as St. Charles hotel. That would be all you wanted to know?
—. ——.
Q. Get his address in case you wanted to communicate with him?
A. Yes; simply for the purpose of communicating with him on business.
419 Q. Then your object in getting the address of a depositor is to place you in a position to communicate with him?
A. Yes, sir.
Q. Is this the only account you ever had with him?
A. I don't think so.
Q. It is only for four or five months?
A. Nine months.
—. Did you have any intimate acquaintance with Mr. Joseph Fabacher?
A. Only business relations. I would see him quite frequently at the bank, and he would come to my desk. He told me he was building a house in Waukesha.

Q. And your business relations were boiled down into this account?

By Mr. McCALEB:

Q. How far back does that account extend?
A. About six years ago. The books will tell.
Q. Not over four or five years?
A. I would not be certain of that.
Q. When did he take out his bank box?
A. In 1894.
Q. His deposit book was balanced and returned to him?
A. That can be proved by the receipt which we take for that and the checks.

By Mr. DART:

Q. Mr. Palfrey, on this account there are two deposits, one purporting to be for $1,100, made in November, 1896, and one for $1,000, made in January, 1897. Do you remember Mr. Fabacher collecting interest coupons on his bonds and if these deposits are the results of these collections?

A. The deposit ticket will not show it.

420 Q. It is customary for the bank to collect coupons?

A. Yes, sir.

Q. There is a deposit in June of $150.

A. (Witness examining account.) No; that's a payment of a check.

Witness at this juncture retires and goes to the New Orleans national bank for further information and continued his testimony as follows:

Q. I find that Mr. Fabacher open- an account on July 20, 1888. The ledger had been opened about a year, so that I think his account was began at that date and was continued at that date. He gave his address and signature. He first gave his address as Custom-house & Royal street-, New Orleans, and afterwards at No. 23 Royal street.

Q. Both at the same time?

A. At different times.

Q. When was that address given?

A. The date is not down. It was a long time ago; many years ago; eight or ten years.

Q. You have no reason for believing that the second address which was given was much later than the original address which he gave?

Q. It is four pages further on, and it only in the signature beginning with "F." It is impossible to tell when the signatures were given exactly and how far apart or what time.

Q. Did you keep an account continuously with Mr. Fabacher from 188– to the last date stated?

A. Yes, sir; from ledger to ledger. I referred from ledger to ledger, and finally down to the beginning of that date.

421 Q. Have you any means to show the condition of his accounts?

A. He opened an account with $4,496, and there were entries all along. It was too warm up there; I could not remain.

WM. PALFREY.

Sworn to and subscribed before me this 15th day of June, A. D. 1897.

[SEAL.] ARTHUR B. LEOPOLD.

JACOB L. BALTZ, being sworn on behalf of opponent, testified as follows:

By Mr. McCALEB:

Q. Where do you reside?
A. In New Orleans.
Q. How long have you lived in this city?
A. About forty-six or forty-seven years.
Q. Did you know the late Joseph Fabacher?
A. Yes, sir.
Q. When did you first become acquainted with him?
A. In 1855 or 1856. I was working for him.
Q. Of what country was he a native?
A. I always thought he was an Alsacean.
Q. What was his native tongue?
A. He spoke German.
Q. Did he speak English?
A. Yes, sir; he spoke English.
Q. What language could he read?
A. Well, he read the German papers; he read also the American papers.
Q. Did you know his first wife, Anna Maria Frey?
A. Yes, sir.

422 Q. Who was his wife and who was he living with when you first knew him?

A. Marie Anna Frey.
Q. When?
A. That was in 1856.
Q. How long did they continue to live together after you first knew him?
A. Well, I left on the 6th of August for Biloxi, in 1859. They were together. I left the house in 1858 or 1859.
Q. How many children did he have by Maria Anna Frey?
A. I only knew of two, Andrew and the girl; I really don't know her name.
Q. Wasn't that Mrs. Antoinette Thormann?
A. Yes; she was Mrs. Troye when she first married.
Q. Isn't she the present Mrs. Antoinette Thormann?
A. She is married now again.
Q. What became of the boy Andreas?
A. He is dead.

Q. About how long ago?

A. I am not sure; it must be about eight or ten years ago.

Q. When did you know him afterwards, and with whom else was he living as his wife?

A. With his wife.

Q. Do you know Magdalena Frey?

A. Yes, sir.

Q. Well, when did he first become acquainted with her?

A. When they came from Europe. I was working for them. Miss Magdalena and another young lady, who was married to a gentleman by the name of Steiffer.

423 Q. Do you know when he was divorced from Maria Anna Frey?

A. I could not tell. I remember of their divorce.

Q. In what business was he engaged when you first knew him?

A. In the saloon business.

Q. After that?

A. On Elysian Fields street he kept the "Old Bull's Head saloon."

Q. What business did you afterwards know him to be engaged?

A. On the Levee street, a wood yard.

Q. And after that?

A. After that he went to Mobile, I think.

Q. After that?

A. He kept a saloon at the corner of Washington —, in the fourth district, and a grocery.

Q. Did you ever visit him?

A. I used to visit him; we were great friends; we were like brothers together.

Q. And after that?

A. He started a saloon again right across the way.

Q. On Common street?

A. Yes, sir.

Q. And after that?

A. He was then beer agent at one time for a St. Louis brewery.

Q. And after that?

A. He started down here.

Q. What business did he carry on there?

A. Restaurant.

Q. What was the name of that restaurant?

A. He first started in a small place; then he made a big success of it.

424 Q. About how long was he engaged in business there before he quit at the corner of Royal and Custom-house street?

A. As far as I can remember, it was during the exposition at New Orleans.

Q. That was in 1884?

A. Yes, sir.

Q. How long after did he continue business?

A. I think he sold out to one of his sons then.

Q. After he sold out their, did you still keep up your acquaintance?

A. Yes; we would see one another; he lived uptown, and I lived downtown.

Q. Where was his residence, when you knew him, up to the time of his death?

A. In New Orleans, except when he was in the country at his plantation.

Q. In the parish of St. Landry?

A. Yes, sir.

Q. What was the condition of his eyesight during the last years of his life?

A. Well, I think poor.

Q. And his hearing?

A. When I spoke to him I always had to speak loud—I mean, he did not hear as lively as he used to.

Q. How many children of his did you know by Magdalena Frey?

A. I knew about four.

Q. Give their names.

A. Lawrence, Toney, and the young fellows who got grown up; I forgot their names, it is so long ago; four I knew, but they were young, and I never followed them up.

425 Q. When did you last see him before his death?

A. Some time ago; it is over four years ago; I saw him one day; he went to get some feed at Gitzinger, across the street from where I kept a saloon, and we had a drink together; that was the last I saw him.

Cross-examination.

By Mr. RYAN:

Q. You have never seen him during the last four years of his life have you?

A. No, sir.

Q. Don't know where he lived or where he claimed his residence?

A. No.

J. L. BALTZ.

Sworn to and subscribed before me this 15 day of June, A. D. 1897.

[SEAL.] ARTHUR B. LEOPOLD, *Not. Pub.*

LEOPOLD LEVY, sworn and examined on behalf of opponent, testified as follows:

By Mr. MCCALEB:

Q. Mr. Levy, where do you reside?

A. At Second and Magazine streets.

Q. How long have you lived in this city?

A. Going on thirty-two years.

Q. Did you know the late Joseph Fabacher?

426 A. Yes, sir.

Q. When did you first become acquainted with him?

A. He comes from the same town where I come from.

A. What town?

A. Busenberg, Bavaria.

Q. He was a native of that place?

A. Me?

A. He?

A. Yes; and me, too.

Q. When did you first form his acquaintance?

A. He was out in Europe when I was a little boy. He used to go out and come back in my time. I saw him out there. I met him while in Europe in Busenberg with his wife.

Q. Which wife was that?

A. With his first wife.

Q. How long ago was that?

A. The year I could not recollect; I was a boy at the time.

Q. Did they have any children?

A. At that time; I don't recollect. Of course, I did not make it my business, you know.

Q. Where di- you afterwards know him?

A. Well, I come in 1865 to this town. He kept a brewery on Chartres street with a man; I don't recollect his name. He was in partnership in the city brewery. After that I looked for work, and was a butcher and used to bring him meat when he kept a restaurant. I was a boy, you know, 17 years then, you know, and I worked for Sam., and I used to deliver meat to his restaurant, you know, at the time.

Q. Well, after?

427 A. Well, after that, you know, I saw him occasionally. He got down in the world; had nothing, and he started, you know, a restaurant, where Lawrence keeps now, and made money. When he was out to Europe he gave my brother 150 marks on my account without my authority, and I gave him back, you know, the money. Of course, we used to sit together and take a drink, but he never told me anything about his business, you know, and I never asked him.

Q. Did you know him in late years?

A. We used to meet and have a talk and take a drink together, you know; he used to receive letters from my people, you know.

Q. How often did you see him within the last two or three years?

A. I used to see him when he come back. He used to go away.

Q. What time did he go away, and what time did he return back?

A. I did not keep account, you know. I didn't see him sometimes for a month or a month and a half, two months, then I would see him occasionally in Fred Hufft's, sitting down, and sometimes he would call me to take a drink. We would sit together very often and talk.

Q. Where did he live when you knew him?

A. He lived on Prytania street. I never was at his house, you know, but I know he lived uptown somewhere.
Q. Did you attend his funeral?
A. No, sir.
Q. Where was his home when you knew him?
A. I always thought this town, New Orleans; but I know he — a place during the summer, and went across the lake somewhere; I don't know where. I never asked him, you know.
428 Q. That was on the Mississippi seacoast?
A. I can't say exactly where he went. I used to meet him downtown sometimes; I used to go into the restaurant to see some drummers, you know; sometimes we would sit together and talk at Fred Hufft's.
Q. When was the last time you saw him?
A. I saw him about a couple of weeks before his death—maybe four, six—maybe four weeks. I did not keep any account of the man.
Q. How often, about, did you see him between the latter part of November last and the third day of March?
A. I swear I could not tell you. I did not keep any account of the man when I see him out on the streets. I see so many people and so many faces I don't keep any account of anybody.
Q. How was his sight and hearing during his last days?
A. I know he was a little bit hard of hearing; not so very much.
Q. And his eyesight?
A. His eyesight was like usual; he could see if he wanted to.
Q. How old a man was he?
A. He must be at least 65 or 70. I am 43, and I was a little boy, a youngster, when he was already a married man.

Cross-examination.

By Mr. RYAN:

Q. You knew Mr. Fabacher pretty well?
A. Yes, sir; he came out of my town. I knew the whole family.
Q. What sort of a man was he; was he a positive and determined man?
A. Man of very good business; a good business man.
429 Q. I mean was he a man used to having his own way, or was he easily influenced?
A. I don't think he could be influenced by anybody.
Q. Would you say he was a strong-headed man?
A. He was a pretty clever man.
Q. I don't mean that; was he strong-willed, relied on himself?
A. I don't know that.
Q. In what way was he easily influenced?
A. I don't think he was.
Q. Was he a man of good judgment?
A. Oh, yes.
Q. Was he a man that when he made up his mind to do a thing he would do it?

A. That far I could not swear. I never had such transactions with him. Only once in a while we would get together, and he would talk about my family, you know. We would have a few drinks together; we never talk about business.

By Mr. McCaleb:

Q. Pretty free drinker?
A. No drunkard.
Q. What do you call a free drinker?
A. He generally drank whiskey, and he liked a good article, a good cognac, a whiskey punch, or a lemonade, according to how he felt. I never saw the man out of the way.

430 By Mr. Buck:

Q. He was physically a very strong man?
A. Oh, yes.
Q. Without losing his head?
A. All people where I come from can stand that.

By Mr. McCaleb:

Q. In his last years what was the condition of his health?
A. He used to complain a little bit all the time, like all old men but not too bad; but I was not a doctor, you know, and could not tell what and how was his health, and I never asked him.
Q. You never saw him anywhere else except in this city?
A. In this city and in Germany when I was a boy. I left there when I was a boy.
Q. You used to see him often?
A. Almost every month, in and out, day and day. I see so many faces.

LEOPOLD LEVY.

Sworn and subscribed before me this 17 day of June, A. D. 1897.
ARTHUR B. LEOPOLD, *Not. Pub.*

431 Miss Emma Roth, sworn and examined on behalf of opponent, testified as follows:

By Mr. McCaleb:

Q. Miss Roth, where do you live?
A. In the city of New Orleans, 1116 Piety street.
Q. What business have you been engaged in here?
A. I have been engaged in typewriting business.
Q. Did you know the late Joseph Fabacher?
A. Yes, sir.
Q. How long did you know him?
A. About fifteen or sixteen years.
Q. Where were you accustomed to see him?
A. Last I saw him at the Fabacher restaurant.
Q. When was that?
A. About November or December of last year. I can't tell exactly when.

Q. Did you see him after that?
A. No; not that I know of.
Q. Have any conversation with him?
A. No, sir.
Q. How often did you meet him previous to that?
A. I used to go down to lunch and meet him very often.
Q. Within the last three or four years?
A. Yes, sir; because I have only been in business three years, and I met him during that time.
Q. Was he engaged in any business during that time?
A. No; not that I know of.
432 Q. Where was his home during the last three or four years?
A. Up on Prytania street somewhere.
Q. Did you know him when he lived on Calhoun street?
A. No, sir. I did not know that he moved from Prytania street.
Q. You met him during the last three or four years?
A. Yes, sir; at Fabacher's restaurant very frequently.
Q. Of what place was he a resident?
A. I think New Orleans.
Q. What is your opinion that he resided here?
A. Because I know his young children were being educated here and because when I visited his home in New Orleans his wife asked me to bring mother up to see her.
Q. Which one of his daughters did you know?
Q. I knew Miss Lena; also Mrs. Broderick; and she went to the school here in New Orleans.
Q. Here in New Orleans?
A. At the public school. Miss Lena told me she was going to Soule college. That was during the early part of 1896. Q. In 1896 I think it was.
Q. Did you know any of his children?
A. Yes; I knew Mr. Lawrence quite well. Mr. Lawrence worked for my father a short time.
Q. How long ago?
A. Fourteen or fifteen years ago.
Q. Do you know the younger members of the family?
A. I learned to know them again. I formed their acquaintances after I had gone to the restaurant, but I think we all had
433 forgotten each other.
Q. At what time did you go to the restaurant?
A. Between 12 and 2 o'clock—almost any time.
Q. During what years?
A. During the years 1895 and 1896.
Q. You were used to meet him there frequently?
A. Yes, sir.
Q. Did you have any conversation with him?
A. Asked after his health.
Q. What was the condition of his health during the last year or when you last saw him?
A. Well, he said he was feeling pretty well.
Q. About how long ago was that?

A. That was some time in November and December; I don't exactly know; it was the latter part of last year.

Q. How was his hearing at that time?

A. He was hard of hearing; always had to speak a little loud to him.

Q. What kind or tone of voice did he speak in?

A. Well, I could not say; ordinarily, I presume; I cannot say exactly.

Q. What did he visit the restaurant for; do you know?

A. I don't know. He used to speak to his granddaughter, on the ladies' side.

Q. That was Miss Troye?

A. Yes, sir; Miss Troye.

Q. Were you at the wedding of Miss Troye?

A. Yes, sir.

434 Q. Who was she married to?

A. Married to Mr. Samuel Gross, of Cincinnati, or of Covington, Ky.

Q. Where were they married?

A. At Mr. Fabacher's residence, on Prytania street.

Q. Did you ever visit the family there?

A. Once.

Q. What time would he come to the restaurant and what time would he go away?

A. I can't say exactly; he used to come occasionally when I was taking lunch; my time for lunch was so very irregular I can't say.

Q. Were you ever there when he was about to take his departure?

A. I was; he would say good-bye; but I don't know. He would leave the ladies' department.

Q. Did you hear him say where he was going?

A. He said he was going home.

Cross examination.

By Mr. DART:

Q. Do you object, Miss Roth, to tell us how old you are?

A. I was 25 yesterday.

Q. And you have only been in business how long?

A. Three years.

Q. You did not go to lunch at the restaurant before, did you?

A. No.

Q. Where did you generally sit when you took your lunch at the Fabacher restaurant?

A. I usually sit near the desk, on account of speaking to the young lady there.

435 Q. The last time you saw him was in November last year; now, when did you see him before that?

A. Now, Mr. Dart, I don't know exactly, because I had gone out of business in July; I had gone out of business and seldom went there then.

Q. You are not willing to swear that you saw him between June and July of last year?

A. I am not willing to say if I saw him between May and June.

Q. You don't know whether he changed his residence, do you, Miss Roth?

A. No; I don't know if he changed his residence, but I think it was in January or February of last year I met Miss Lena down there, and I asked what school she was going to, and she told me Soule; that she was going to Waukesha for the summer.

Q. This instance of telling you this in February about going to Waukesha, how did that come to your mind?

A. I happened to be taking lunch down there.

Q. How did the people in this case know you were in possession of this information; who talked to you before?

A. Mr. Troye asked me if I would come up to testify for his mother.

Q. Did he tell you about the case?

A. I saw all about it in the papers.

Q. The reason I ask you, Miss Roth, — because you told Mr. McCaleb that when he would leave the restaurant he said he was going home.

A. Yes, sir; his granddaughter, Miss Josephine—whenever he would be on that side, she would say, "Grandpa, are you going home?" and he — say, "Yes;" that is all I can remember.

EMMA ROTH.

Subscribed and sworn to before me this 21st day of June, A. D. 1897.

ARTHUR B. LEOPOLD, *No. Pub.*

436 HUGH J. McDONALD, sworn and examined on behalf of opponent, testified as follows:

By Mr. McCALEB:

Q. Mr. McDonald, where do you live?
A. 1526 Conery street.
Q. In what business are you engaged in?
A. In the general tomb business—marble works.
Q. Do you know where the tomb of Joseph Fabacher is?
A. Yes, sir; in St. Joseph cemetery No. 1.
Q. Who built it?
A. My father, Hugh J. McDonald.
Q. Is your father living?
A. No; he is dead.
Q. When did he die?
A. October 21st, 1895.
Q. When was that tomb built?
A. In 1889, if I recollect.
Q. Do you know how much it costs?
A. I do not know.
Q. Do you know how much it is worth now—its value?
A. Yes.

Q. How much would it cost to erect a tomb of that kind now?
A. About $1,800.
Q. It would cost now about $1,800?
A. About.
437 Q. What inscription is there on that tomb?
A. Mr. Fabacher's inscription—Joseph Fabacher.
Q. Is that all the inscription on the tomb?
A. That's on the marble slab. Do I understand you to mean an inscription is a death?
Q. No; I mean the inscription—the writing on the tomb?
A. On the tomb?
Q. What is written on the tomb?
A. Family tomb of Joseph Fabacher.
Q. That's on the top?
A. On the pediment.
Q. Do you know who is buried in this tomb?
A. Mr. Fabacher.
Q. Anybody else?
A. I could not say, but I am of the opinion that there is.

By Mr. BUCK:

Q. Do you know when that tomb was built?
A. I can't say; you will find it on the tomb. I think in 1889.

By Mr. DART:

Q. Did you build it?
A. No.
Q. You are testifying from what you are able to figure up?
A. Yes, sir.
Q. You don't claim any personal knowledge as to when it was built?
A. No, sir.

By Mr. MCCALEB:

438 Q. Do you recollect when it was built?
A. It was in 1889. I recollect, because I worked on that tomb myself.

H. J. McDONALD.

Sworn to and subscribed before me this 24 day of June, A. D. 1897.

[SEAL.] ARTHUR B. LEOPOLD, *Not. Pub.*

439 Dr. F. LOEBER, being duly sworn and examined on behalf of opponent, testified as follows:

Direct examination.

By Mr. MCCALEB:

Q. What is your profession?
A. I am a physician.
Q. How long have you been engaged in that profession?

A. Since 1866.
Q. Did you know the late Joseph Fabacher?
A. Yes, sir.
Q. How long were you acquainted with him, Doctor?
A. Since about 1884; about ten or twelve years.
Q. About what aged man was he at the time of his death?
A. About 65, 67, 66.
Q. You were his family physician?
A. I was.
Q. For how many years?
A. Since that time.
Q. He was what you call an *ab onne* of yours—employed by the year?
A. No, sir.
Q. You attended him during his last illness, Doctor?
A. I did at the Touro.
Q. When did you first commence to treat him during his last illness?
A. I attended to him in the morning, when the operation was performed. Dr. Kohlman saw the condition and he telephoned to me. I went up there early in the morning — place him
440 under the influence of opiates to be operated.
Q. What was the cause of that disease, Doctor?
A. It is impossible to say; he had umbilical hernia.
Q. Where did he reside, Doctor?
A. Resided at Calhoun street, one or two streets back from St. Charles street.
Q. During the time you knew him where did he reside?
A. First, when I knew him, he resided on Natchez alley; he had a restaurant there.
Q. And after?
A. He lived down on Roayl street, and lived on Custom-house.
Q. During the last three or four years, Doctor, what portion of the year did you see him here?
A. During the last few years I saw him in winter.
Q. About what time, do you remember, did you see him here in the fall or winter, and how long?
A. I saw him in November, because I was the cause that I saw him; because I made him live in Waukesha, Wisconsin, and I told him it was impossible for him to stand the winter there, and he was threatened with pneumonia; he had an attack of pneumonia two or three years ago; and that he had to come back here or that he would get sick and die.
Q. He came back ever- winter?
A. My say-so; it was hard work to prevent him from coming home.
Q. His family came with him?
A. His wife and daughter and little boy.
Q. Went to school here?
A. Here.

441 Q. Do you know why he wanted to go away from here?

A. The reason why is that I first sent him up there; he was suffering from a disease of the liver, and I sent him up there to Waukesha, and he liked it so well that he concluded to stay up there.

Q. Stayed there during the summer months?

A. Summer and winter; that was his idea, to stay permanently up there, and he bought a house, built a house, with the intention of staying there, but I told him he would never be able to stand the winter.

Q. Did you visit his house here, Doctor?

A. Yes, sir.

Q. While he was on Calhoun street?

A. When he lived on Prytania and afterwards when he lived on Calhoun street.

Q. Where did all the members of his family reside?

A. Resided in their own houses.

Q. Here in New Orleans?

A. Only the two little ones lived with him and their mother; the little girl and boy.

Q. Did you know his first wife?

A. I never knew he had a first wife.

Q. What were the condition of his faculties as to his sight and hearing of late—did he read with or without glasses?

A. He could understand, but his hearing was not so acute; his sight was not so good.

Q. Had to speak loud to him?

A. Yes, sir; sometimes.

Q. His eyesight?

A. He wore glasses.

442 Q. Don't you know he consulted an occulist here?

A. I didn't know. A man of his age may consult an occulist if his eyesight fails him.

Q. From what disease was he suffering from?

A. Umbilical hernia; stomach trouble.

Q. Who gave the certificate of his death?

A. I did, or Dr. Kohlman; one or the other.

Q. Look at this certificate, Doctor.

A. (Witness examining death certificate.) Dr. Kohlman gave the certificate; he is my assistant at the Touro infirmary.

Q. Did he consult with you in relation to that certificate?

A. Well, he died from the operation. The doctor knew the case. He died from umbilical hernia; general debility.

Q. From the results?

A. From peritonitis. Some of the intestines were gangrenous already when he operated.

Q. This certificate says that he was seventy-two years of age at the time of his death?

A. He did not look that old.

Q. Did you attend any other members of his family or grandchildren?

A. Yes, sir.
Q. He paid you for your professional services?
A. Always paid me.
Q. Who paid you for your attention during his last illness?
A. No one.
Q. You have not been paid yet?
A. No.

443 Cross-examination.

By Mr. BUCK:

Q. I understand you to say you have been acquainted with Mr. Fabacher — 1881–1882?
A. About that.
Q. Did you form your acquaintance through your profession?
A. Yes, sir.
Q. Were you acquainted with Mrs. Fabacher, his wife?
A. Yes, sir.
Q. When did you form her acquaintance; what year?
A. I came up to the house; this young man was sick (witness pointing to Mr. Peter Fabacher), and I attended to him. Certainly I got acquainted with Mr. and Mrs. Fabacher.
Q. What year?
A. I really can't say; it was before the exposition here.
Q. That you first became acquainted with Mr. Fabacher?
A. And Mrs. Fabacher, too.
Q. Have you been quite well acquainted with them since that time?
A. I think I was.
Q. Both of them?
A. Yes.
Q. What kind of a man was Mr. Fabacher, as being a positive man or otherwise?
A. He was.
Q. A sort of a man to be easily influenced?
A. No, sir; he was a very positive man. He made up his mind to do a thing and he did it.
Q. Not easily influenced?
A. No, sir.
444 Q. Strong will power?
A. Yes, sir; some time you could not reason with him; that's all.
Q. Outside of being positive and strong-powered, what sort of a man was he for being a clever-headed man?
A. He was clear-headed and a practical man.
Q. Mrs. Fabacher, what sort of a woman was she?
A. She was a hard-working, industrious woman; she was an example of a mother; she is certainly a very good mother and a very good housewife. She done things for her husband that not many wives would do for their husband-.

Q. Do you know her reputation as being respectable in every way?

A. Never seen or heard otherwise.

Q. And all her children?

A. Yes, sir; they were brought up by their father to be hard-working. They were made to work when they were youngsters.

Q. Now, what year was it that you advised Mr. Fabacher to go to Waukesha for his health; about what year?

A. About four or five years ago.

Q. For the purpose of drinking the water there?

A. First, I advised him to go up there, as he drank too much and the effect was bad for his liver and stomach, and being in contact with those people, to go away, and I sent him to Waukesha so he would not be subject to dropsy; so he did, and spent the summer, and it benefited him a great deal.

Q. Where was he living?

A. He was living on Prytania street. Well, it done him so much good that he concluded to stay there, and he sold everything, arranged his business, and he went away with the intention of remaining there permanetly.

445 Q. How do you know that?

A. He told me so.

Q. What did he tell you?

A. He liked it better; it was healthier; that he was building a house to make him comfortable the rest of his life, and I told him at the time that he could not stand the winter, and I found I was correct. He could not stand the cold and had to come down. The first winter he had pneumonia; the other winters he was more careful.

Q. Before he was taken sick on his last visit here, did you see and talk to him?

A. I met him every day.

Q. Did you converse with him?

A. Yes, sir.

Q. Do you know when he intended to go back?

A. Never asked him.

Q. Do you know that he owned considerable real estate here?

A. I knew that he had a great many properties, but he sold them, or what he did with them I don't know.

Q. When did he arrange that matter?

A. That I was told. He told me that brewery stock and all those kind of things could not be arranged, but I told him he was a sick man and had to go.

Q. Afterwards he arranged all these properties?

A. He fixed everything so he could leave.

By Mr. McCaleb:

Q. You say he was a hard drinker—drank to excess?

A. That I can't say. He could take a great deal, but of late years he could not stand it so well as when he was young. His——

446 Q. What was the cause of his troubles?

A. The trouble was brought on by that.
Q. Excessive drink?
A. Yes, sir.
Q. That was the reason why you advised him to go to Waukesha?
Q. I advised him, first, that, as his liver was out of order and his intestines were out of order, I told him to go to Waukesha; he had no kidney or bladder trouble; it was chronic catarrh of the stomach, and the waters benefited him so much, his general health go- so much better, that he liked it up there and concluded to stay.
Q. He continued to return here every winter?
A. He did not want to, but he had to.
Q. You say he was a very determined, hard-*d*eaded man?
A. Yes, sir.
Q. Did he follow your advice—professional advice?
A. Well, yes; if I told him anything; I had more influence over him than anybody else; he took my advice much more than anybody else.
Q. Do you remember him wearing something around his middle when he came down?
A. That was to protect his rectum he wore a bandage around—one of Jaeger's bandages.
Q. Did he wear a support?
A. He wore a support the last time he came here, because he had a similar attack up there, and the doctor made him wear a support.

447 By Mr. RYAN:

Q. Did you ever see him intoxicated?
A. Yes, sir; I think I have seen him under the influence of liquor.
Q. How frequently?
A. Impossible for me to say; I might have seen him three or four times.
Q. Did he drink the last two or three years?
A. No; he could not stand it.
Q. Doctor, did drinking affect his mental capacities in any way?
A. No; that I could not say.
Q. Was he clear-headed at the time the operation was performed on him?
A. Mentally al- right; yes, sir.
Q. Did you converse with him, explain to him what was to be done?
A. Yes, sir.
Q. Did he appreciate?
A. He seemed to appreciate everything; yes, sir.

By Mr. MCCALEB:

Q. About what time did he return here last fall?
A. I really don't know; I can't say; November or October; I don't know.

By Mr. RYAN:

Q. What children were at the hospital when he was operated on?

A. There was the boys.

448 Q. Give their names.

A. Lawrence, Peter, his wife, his brother-in-law, and his other boys.

DR. F. LOEBER.

Subscribed and sworn before me this — day of June, A. D. 1897.

ARTHUR B. LEOPOLD,

[SEAL.] *Notary Pub.*

449 FRANK R. JOHNSON, being duly sworn and examined on behalf of opponent, testified as follows:

Redirect examination.

By Mr. MCCALEB:

Q. Mr. Johnson, what business are you engaged in?

A. Undertaking.

Q. Reside in this city?

A. Yes, sir.

Q. You are a member of the firm of F. Johnson & Co.?

A. Yes, sir.

Q. Did you know the late Joseph Fabacher?

A. By sight.

Q. Who were the undertakers that had charge of his funeral?

A. Johnson & Son Co., Ltd.

Q. Who inserted the funeral notices?

A. We did.

Q. Look at this funeral notice in the Picayune of March 4th, 1897; you inserted that?

A. (Witness looking at paper shown him.) Yes, sir.

Q. From whom did you get your data about him, his age and residence?

A. From Mr. Lawrence Fabacher or one of the other brothers.

Q. What other brother?

A. I think the gentleman that was here just now.

Q. Mr. Peter?

A. Yes, sir.

Q. They gave you this data and you published it in the

450 Times-Democrat and Picayune?

A. We gave a copy to the Picayune, and we ordered it to send a proof to the Times-Democrat.

Counsel for opponent offers the advertisements of the death of Joseph Fabacher in the Times-Democrat and Daily Picayune of March 4th, 1897, in evidence.

Q. Who gave you the information that he was a native of Busenberg, Germany?

A. Mr. Lawrence Fabacher.

Q. In the presence of this other gentleman (counsel pointing to Mr. Peter Fabacher)?

A. I think so; I am not positive.

Q. Who gave you the information that he was seventy-two years of age?

A. That I could not tell you; I was sitting down writing this notice and one would suggest his age, another would say he was born in such a place, and I wrote it down; I was not paying any particular attention.

Q. That he was a resident of this city for fifty-three years?

A. All this information came from the assembly—Mr. Lawrence Fabacher and his brother.

Q. Where was this written?

A. Down in the restaurant.

Q. And Mr. Lawrence Fabacher and his brothers were there at the time?

A. One brother.

Q. Was it this gentleman (counsel pointing to Mr. Peter Fabacher)?

A. Yes, sir; Mr. Peter Fabacher; he was in and out.

451 Offered by opponent:

The Times-Democrat, Thursday, March 4th, 1897.

Died.

Fabacher.—Wednesday, March 3, 1897, at 7.50 a. m., Joseph Fabacher, a native of Busenberg, Germany, aged seventy-two years, a resident of this city fifty-three years.

His funeral will take place from his late residence, No. 1716 Calhoun street, this (Thursday) morning at 10 o'clock. Solemn requiem mass at Church of Immaculate Conception at 10.45. Interment in St. Joseph's cemetery. Relatives and friends of the family are invited to attend.

The Daily Picayune, New Orleans, Thursday, March 4, 1897.

Died.

Fabacher.—Wednes*ady*, March 3, 1897, at 7.50 a. m., Joseph Fabacher, a native of Busenberg, Germany, aged 72 years, a resident of this city fifty-three years.

His funeral will take place from his late residence, No 1716 Calhoun street, this (Thursday) morning at 10 o'clock. Solemn requiem mass at Church of Immaculate Conception at 10.45. Interment in St. Joseph's cemetery. Relatives and friends of the family are invited to attend.

452 Q. The funeral notice in the Times-Democrat is a duplicate of this?

A. Yes, sir.

Q. Look at this certificate from the board of health.

A. This is a certified copy of the doctor's certificate taken from the board of health.

Q. Who is this Mr. Tharp?

A. He is our book-keeper.

Q. Who furnished the information for that certificate?

A. I could not tell you.

Q. Did you get that information from Mr. Tharp?

A. No, sir; this is a copy of the books of the board of health of the doctor's certificate.

Q. Not as to his age and residence?

A. The doctor puts that on his certificate, it is recorded in board of health, and this is a copy of it; this information comes from the doctor.

Counsel offers the funeral notices of the Picayune and Times-Democrat of March 4th, 1897.

Counsel for proponent object on the ground that it is incompetent, immaterial, irrelevant, and don't prove anything.

Cross-examination.

By Mr. RYAN:

Q. It was in your office where you wrote this notice, was it not.

453 A. No, sir; we wrote this notice down at Fabacher's restaurant; at Mr. Fabacher's office; a little office in the restaurant.

Q. You did not enquire of them if he was a resident of New Orleans? You did not make any special enquiry?

A. I wrote it out at the dictation of those present; we are so used to do this every day that I paid no special attention to it.

Q. You put it in form?

A. Yes, sir.

Q. You don't mean to say that Lawrence Fabacher told you that he was a resident of the city of New Orleans——

(By Mr. MCCALEB:)

Q. Who told you?

A. I could not say who told me.

Q. Who gave you his age?

A. I could not tell you that; just imagine writing that notice in an assembly; one would say that he died on such a day and another would say that he was born in Busenberg, Germany.

Q. But who was the somebody that said all this?

A. I could not tell you. I remember distinctly that Lawrence Fabacher told me he was born in Busenberg, Germany; that fact strikes me very strong; beyond that I could not say who gave me the information.

Q. Was this notice read to them afterwards?

A. I can't say.

Q. Was it shown to them?

A. I could not swear; I usually read it out to see if there are

any corrections or alterations to be made or inserted before it is sent to the paper.

Q. Did you do that on this occasion?

A. I probably did.

454 Q. You were not personally acquainted with Mr. Fabacher?

A. Only by sight.

Q. Where did this funeral cortege assemble at?

A. At Calhoun street; the number is in the paper.

Q. How many people were there?

A. Quite a large number.

Q. About?

A. I should think there were a couple of hundred people there.

Q. Where did they go from Calhoun street?

A. Went to the Jesuit church.

Q. On Baronne street?

A. Yes, sir.

Q. And afterwards?

A. St. Joseph's cemetery on Washington street.

Q. Who were the officiating priests at the services?

A. I could not tell you.

Q. Do you remember who the pallbearers were?

A. I don't remember.

By Mr. RYAN:

Q. Writing of these notices which have been referred to become quite mechanical with you in your business?

A. I do it almost automatically.

Q. You had known Mr. Fabacher had resided in this city?

A. Oh, yes.

Q. Is it probable that you have assumed that fact and taken it as granted that Mr. Fabacher was a resident of this city, and so

455 inserted that part of the notice without consulting with anybody?

A. I don't think I was doing any thinking.

Q. You have to do a little thinking to do the writing; you construct the form of the notice?

A. I don't think I suggested anything.

Q. It is simply form, which you have written many, many times?

A. Yes, sir.

Q. You would not stop to ask if he were a resident of any other State?

A. No, sir.

Q. And you would not expect them to tell you that he was a resident of this city?

A. If they wished it in the notice I would expect them to tell me.

Q. Don't you always put it in the notices?

A. No, sir.

Q. You have no reason to believe that any one told you that he was a resident of New Orleans at that time?

A. I can't remember who told me.

Q. You have no recollection of any one telling?

(By Mr. McCALEB:)

Q. From whom do you usually obtain your information, as you state in the notices?

A. That I could not very well classify.

Q. Don't you usually obtain it from the members of the family?

A. Very frequently we get it from outsiders. Sometimes this matter is taken into hand by some friends.

456 By Mr. DART:

Q. You have known the name of Fabacher, I suppose, for twenty years among the landmarks of the town?

A. I have known it since the exposition time.

Q. Very familiar name?

A. Yes, sir.

Q. And you didn't know that Joseph Fabacher had changed his residence?

A. No.

Q. Nor was it brought to your knowledge that he had?

A. No, sir.

Q. Barring the fact of his age and residence, you could have filled out the form, once you have the age and birth place; then the rest you can fill out yourself?

A. Yes.

Q. Never referred to anybody?

A. No, sir.

Q. Knowing the name so well, you assumed the fact that he was a resident of this city for a number of years, without any information, and the reputation you heard of him?

A. Possibly so.

FRANK R. JOHNSON.

Sworn to and subscribed before me this 17th day of June, A. D. 1897.

[SEAL.] ARTHUR B. LEOPOLD, *Not. Pub.*

457 Dr. WILLIAM KOHLMAN, being sworn on behalf of opponent, testified as follows:

Direct examination.

By Mr. McCALEB:

Q. Are you connected with the Touro infirmary?

A. I am.

Q. In what capacity?

A. Assistant house surgeon.

Q. Doctor, when a patient first comes to the Touro infirmary, what do you do?

A. We have a register.

Q. You take his name?

A. His name.

A. Residence?

A. Yes, sir.
Q. Age?
A. Age, birth-place; that's all.
Q. Don't you give the nature of the disease in your register?
A. After the patient dies or is discharged.
Q. From whom are these facts obtained?
A. From whom?
Q. Yes, sir.
A. Which facts?
Q. A man's age, name, residence, and so on.
A. Either from the patient himself or from one of the relatives.

Q. Do you remember when Mr. Joseph Fabacher came to
458 the hospital, was his name entered on the register?

A. I suppose so; his name must have been registered.
Q. Doctor, you gave the certificate in this case?
A. I don't know.
Q. Suppose you go down to the board of health, on the next floor, and see if the original certificate is not signed by you?
A. Either Dr. Loeber or myself signed the certificate.
Q. I would rather, Doctor, that you go down and look for yourself. I don't want to entrap you into saying what is not so.

Witnesses goes down and examines original records of the board of health and returns and continues:

A. The certificate of death was signed by myself; yes, sir. If Doctor Loeber did not sign it, then I signed it; it is signed by me.
Q. When you give a certificate of that kind of death, where do you get the date from?
A. From the register.
Q. From what source, Doctor, did you obtain the information that Joseph Fabacher was a native of Busenberg, Germany?
A. I don't know anything about that.
Q. Was it copied from the register?
A. It is copied from the register.
Q. And his age, 72 years, that is copied from the register, too?
A. Yes, sir.
Q. And that he was married?
A. Yes, sir.
Q. And that he was 53 years in the city, and resided at No. 1716 Calhoun street; that date, you say, is all taken from the register?

459 A. All taken from the register.

Q. Who obtained this information when Mr. Fabacher entered the hospital; who entered it on the register of the hospital?
A. It is the duty of the clerk.
Q. What is his name?
A. Goldstein.
Q. David Goldstein?
A. Yes, sir; David Goldstein.

Cross-examination.

By Mr. RYAN:

Q. Doctor, I reside at Waukesha, Wisconsin; suppose I took up a residence here on any one of your streets and had occasion to be taken to a hospital, you would enquire where the residence of the party was in this report on the register if I had a residence?

A. It seems so.

Q. But if I reported as residing at 617 Prytania street, it would so appear on the register?

A. Yes, sir; it will appear on the history. We have two books, a history and a register; we keep a history of the case, and when a patient comes in we send a sheet to let the doctor know the name of the patient. In case something should happen to the patient the clerk can know where he comes from. A man might take suddenly sick and might die in an hour, and we would not know where to go to.

Q. Did you know Mr. Fabacher before he came to the hospital?

A. Yes, sir.

Q. You know he had resided in the city of New Orleans for some time?

460 A. I knew him about three years.

Q. You first got acquainted with him in 1894?

A. About that time.

Q. Did you see much of him in 1895 and 1896?

A. He was living opposite the Touro infirmary at that time.

Q. On Prytania street?

A. Yes, sir.

Q. When you knew him first he resided out there and left there. Do you know where he lived afterwards or where he claimed he was living?

A. I don't know anything about that.

Redirect examination.

By Mr. MCCALEB:

Q. You only know what this register shows?

A. Yes, sir.

Q. You took this information from your register, and under the rules of the hospital it is the duty of the clerk, Mr. Goldstein, to ascertain these facts?

A. Taken from the register. It is given by the patient or one of the relatives. If the patient is sufficiently strong, he gives it himself.

DR. W. KOHLMAN.

Sworn to and subscribed before me this 25th day of June, A. D. 1897.

ARTHUR B. LEOPOLD,
Notary Public.

[SEAL.]

461 HENRY THARP, recalled and re-examined on behalf of opponent, testified as follows:

By Mr. McCALEB:

Q. Mr. Tharp, did you make this declaration before the board of health?

A. (Witness examining certificate of death from board of health.) Yes, sir; that is taken from the doctor's certificate.

Q. Who furnished you that certificate?

A. The doctor.

Q. Dr. William Kohlman?

A. Yes; the doctor of the Touro infirmary. Of course, I could not remember the doctor; I know that Dr. Kohlman is the doctor up there.

HY THARP.

Sworn and subscribed before me this 17 day of June, A. D. 1897.
[SEAL.] ARTHUR B. LEOPOLD, *Not. Pub.*

462 DAVID GOLDSTEIN, being duly sworn and examined on behalf of opponent, testified as follows:

By Mr. McCALEB:

Q. Mr. Goldstein, where are you employed?

A. At the Touro infirmary.

Q. What kind of institution is that?

A. A hospital for sick.

Q. A public hospital?

A. More of a private nature; we take charity patients and pay patients.

Q. Is it an incorporated institution?

A. Yes, sir.

Q. What is your position at the hospital?

A. Clerk in charge of the hospital.

Q. When a patient comes to that hospital what is the first thing you do?

A. The first thing we do is, he is examined by the physician in charge to see if — has complied with all the rules; see if he has no contagious or infectious disease, and after he has complied with that rule and is admitted by the doctor he comes to the office and he is recorded on the books; then he is assigned either to a private room or in the ward, and usually makes a deposit of one week.

Q. Your rules require that you should take down the name, age, residence, nativity, social condition?

A. Yes, sir; that is one of my duties.

463 Q. From whom do you obtain these facts to enter on the register?

A. Usually from the patient himself.

Q. When the patient is in a condition to give it himself?

A. Yes, sir; when he is too sick, then the person who accompanies him, a relative or one of the friends, as near as he can.

Q. When was Mr. Joseph Fabacher admitted in the hospital?
A. On February 23rd, about 10 o'clock.
Q. Do you take from him his name?
A. No, sir. I got it from his son.
Q. His son?
A. Lawrence Fabacher.
Q. His age?
A. Lawrence Fabacher.
Q. His nativity?
A. Lawrence Fabacher.
Q. Social condition?
A. All from Lawrence Fabacher.
Q. His sex?
A. We see that ourselves.
Q. Who gave you his residence?
A. Lawrence Fabacher.
Q. And his disease?
A. The doctor. You see, Mr. McCaleb, the patient is either discharged or dies, and the doctor writes on the sheet a diagnosis of his case and his ailment, and that is then entered on the books.
Q. Now, look at this document and see if that is an abstract of the register of the Touro infirmary.
464 A. (Witness looking at document produced.) Yes, sir; that is in my own handwriting.
Q. Is that correct?
A. It is.
Q. About the number of years Mr. Fabacher resided in New Orleans—where did you get that?
A. I got it all from Lawrence Fabacher himself; that the patient was a resident of New Orleans forty-two years.
Q. From what place?
A. It seems on Calhoun street, because when he died the body was taken to Calhoun street from the Touro infirmary.
Q. This is a correct abstract from your register?
A. Yes, sir.

Counsel for opponent offers the document in evidence.

Q. Now, Mr. Goldstein, where was Joseph Fabacher when the facts were given to you?
A. He was up in his room, room No. 1, Touro infirmary.
Q. Where were all these facts given to you?
A. In the office.
Q. By Mr. Lawrence Fabacher?
A. Yes, sir.
Q. His son?
A. Yes, sir.
Q. And you say this is a correct abstract from the hospital register?
A. From the books on record.

465 Offered in evidence by contestant:

Touro infirmary.

No. 8410. Occupation, none.
Name, Joseph Fabacher.
Age, 72; nativity, Germany; sex, male.
Residence, New Orleans; 42 years.
Social condition, married.
Disease, strangulated umbilical hernia.
Admitted February 23, 1897.
Died March 3rd, 1897.
Results, ——.
Remarks, ——.

D. GOLDSTEIN, *Clerk.*

466 Q. And these facts, as I understand you, were given at the time Mr. Joseph Fabacher was admitted to the Touro infirmary?

A. I will explain; when Mr. Fabacher was brought to the Touro infirmary he was to remain there. Dr. Loeber was going to perform an operation on him, but after the operation was finished his condition became alarming. We had his son to register him as a regular patient. If he only remained there a couple of hours, then we would not have put him on the book, but as his condition became alarming we had him register as a regular patient.

By Mr. BUCK:

Q. Mr. Joseph Fabacher was brought there for an operation?

A. Yes, sir; but after the operation was over he was feeling bad from the effects of the operation and chloroform; that his condition became alarming.

Q. Who did he have to go to the Touro with him?

A. Mr. Lawrence Fabacher and Mrs. Joseph Fabacher, his wife; they came in a carriage.

Q. Did he walk?

A. Walked in the hospital.

Q. At that time you made no enquiry?

A. No; he was known to me. At times people come into the hospital and want to see the doctor. We pay no attention until after they are admitted.

Q. You put them on a register when they become fixed patients?

A. Yes, sir.

Q. This operation did not pan out as the doctor seems to have expected, and Mr. Fabacher remained sick and died there, and you registered him as you have described?

A. Yes, sir.

467 Q. How long have you been in the Touro infirmary?

A. Up to the time of Mr. Fabacher's death, about two years.

Q. Did you know Mr. Fabacher when he resided opposite the Touro infirmary?

A. Yes, sir; I knew him for a while when he lived there, but I was not employed at the Touro while he was living there.

Q. Do you know when he gave up that house?

A. No, sir.

Q. You receive patients under all conditions, except what you have stated?

A. Yes, sir; both charity and pay patients.

Q. Suppose a patient is sent from the St. Charles hotel to the Touro infirmary, how would you register him?

A. As a regular patient.

Q. No; I mean as to residence.

A. You see, we would register him as a resident of New Orleans; then we have another line where we say, "The last place from New York;" we would register the place where the patient comes from last.

Q. Suppose, now, he, a patient, would be sent there by the proprietor of the St. Charles hotel, how would you register him? Would you take the circumstances in consideration, and who brought him there?

A. We have nothing to do with the St. Charles hotel; nothing at all.

Q. You put it down as it is told you?

A. That's all.

Q. You don't know whether, as a matter of fact, Mr. Fabacher, in February, 1897, was a resident of New Orleans or not?

A. No, sir.

468 Q. Deceased was well known, generally speaking?

A. Yes.

Q. Don't know whether he lived in Waukesha, Wisconsin?

A. No, sir.

Q. He was well known, and you didn't know whether he was a resident of this city or not?

A. He came there, and we usually ask, "How long are you a resident of New Orleans?" Lawrence Fabacher said "42 years." He must have been a permanent resident of New Orleans, evidently.

Counsel for proponent moves to strike out the part of the witness' answer as to the in*ter*ference of the residence of the deceased.

Q. You have known him as a resident of New Orleans before?

A. Yes, sir.

Q. Known him a long time?

A. Yes, sir.

Q. A man well known here?

A. Yes.

Q. You didn't know he moved his residence to Waukesha?

A. Only from hearsay.

By Mr. McCaleb:

Q. What did he say when he came there as to his residence?

A. I never spoke to him. Lawrence Fabacher gave me all the information.

Q. What did he say as to residing at No. 1716 Calhoun street?
A. Nothing.
469 Q. Was this information taken from your register?
A. (Witness examining certificate from board of health.) No, sir; we have no such record there. He died at the Touro infirmary, where he was treated, and after he died he was taken to No. 1716 Calhoun street. Mr. Johnson came up in the evening and got the body.

D. GOLDSTEIN,
Clerk of Touro Infirmary.

Sworn and subscribed before me this 16 day of June, A. D. —.
[SEAL.] ARTHUR B. LEOPOLD, *Not. Pub.*

470 In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

STATE OF LOUISIANA, } ss:
Parish of Orleans, City of New Orleans, }

I, Arthur B. Leopold, a notary public in and for said parish and State, do hereby certify that the depositions of Jacob L. Baltz, Bernard Bruenn, Sam. H. Gross, David Goldstein, Rev. Jos. Gerlach, Frank L. Johnson, John Keppler, Dr. William Kohlman, Dr. F. Loeber, L. Levy, Hugh J. McDermot, William Palfrey, Miss Emma Roth, Lee Scott, Henry Tharp, Mrs. Antoinette Thormann (opponent), Mathias Troye, and Miss Josephine Troye were taken before me at my office, in the city of New Orleans, in said parish, on the eighth and ninth days of June, A. D. 1897, at the hour of 10 o'clock a. m.; that they were taken at the request — contestants in the above-entitled matter upon verbal interrogatories; that they were reduced to writing by myself; that they were taken to be used on the trial in the matter of the probate of the last will and testament of Joseph Fabacher, deceased, now pending in the county court in and for Waukesha county and State of Wisconsin, and that the cause or reason for which said depositions were taken is that the above named are necessary and material witnesses for said contestant on the trial of the above entitled matter, and that said witnesses are not residents of the State of Wisconsin, but reside in and now are in the said city of New Orleans, State of Louisiana, and that an issue of fact has been joined in the above-entitled matter; that Messrs. E. Howard McCaleb, attorney for opponent, and Buck, Walshe & Buck, Henry P. Dart, and T. E. Ryan, attorneys for proponent, attended at the taking of such depositions, and that said depositions were taken in pursuance of the annexed stipulation; that said deponents were sworn, before examination, to testify the truth, the whole truth, and nothing but the truth relative to said matter, and that said depositions were carefully read to said deponents respectively and then subscribed by them respectively.

[NOTARIAL SEAL.] ARTHUR B. LEOPOLD,
Notary Public.

471 STATE OF WISCONSIN, }
Waukesha County, Waukesha County. }

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

It is hereby stipulated and agreed by and between the proponents and contestant in the above-entittled matter, by their respective attorneys hereto, that the depositions of Henry Tharpe, J. M. Leveque, Bertie Sneed, Bernard Bruenn, Samuel H. Gross, Mathias Troye, Mrs. Antoinette Thormann (born Fabacher), Mrs. Hugh J. McDonald, Rev. Jos. F. Lambert, Rev. Joseph Gerlach, S. J. John Keppler, William Palfrey, Dr. F. Loeber, Lee Scott, Miss Josephine Troye, William Wallace, Reuben M. Frank, Mrs. Reuben M. Frank, W. J. Tebault, Sam. H. Meyer, J. J. Baltz, Leopold Levy, Edward Schamountbay, Dominick Mancuso, Miss Emma Roth, Very Rev. Joseph A. Firlie and R. J. Moody, and Albert G. Phelps, all residing in the city of New Orleans, in the State of Louisiana, be taken on behalf of said contestant, to be used in the trial of the above-entitled matter and in all subsequent proceedings therein, before Arthur B. Leopold, a notary public in and for said State of Louisiana, at his office, at room 302, in Liverpool and London and Globe building, in said city of New Orleans, on the 8th day of June, A. D. 1897, at 10 o'clock a. m., without further notice or objection, subject, however, to all such objections that may be raised by either party hereto as to the competency, relevancy, and materiality of the testimony therein contained.

Dated Waukesha, Wisconsin, this 6th day of May, A. D. 1897.

CARNEY, CLASEN & WALSH,
Attorney- for Antoinette Thormann (Nee Fabacher), Contestant.
RYAN & MERTON,
Attorneys for Proponents.

472 STATE OF WISCONSIN, }
Waukesha County. }

In County Court.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased, Testate.

On the opposition of Mrs. Antoinette Thormann, born Fabacher, to probate of will.

473 STATE OF WISCONSIN:

County Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased, Testate.

On opposition of Mrs. Antoinette Thormann (born Fabacher).

Testimony and note of evidence taken on behalf of opponent in above-entitled matter before Arthur B. Leopold, a notary public in and for the parish of Orleans, duly commissioned and qualified, and therein residing, at his office, room 302 Liverpool & London & Globe building, New Orleans, Louisiana, on the 17th day of June, A. D. 1897, at the hour of 3 o'clock p. m., by virtue of the annexed stipulation.

474 STATE OF WISCONSIN, }
Waukesha County. }

In County Court.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Testate, Deceased.

On the opposition of Mrs. Antoinette Thormann, born Fabacher.

Index.

Biographical sketch of Jos. Fabacher from Times-Democrat... 127
Davis, Joseph..... 142
Graham, Lewis..... 135
McEnery, M..... 121
Morel, Octave J..... 122
Photograph of Joseph Fabacher..... 132
Sneed, Bertie..... 125
Thompson, T. P..... 144
Washburn, W. W..... 132
Wormuth, G. H..... 133

475 MATHEW MCENERY, being duly sworn and examined on behalf of opponent, testified as follows:

By Mr. MCCALEB:

Q. Where do you reside?
A. 1440 St. Mary's street, New Orleans, La.

Q. How long have you lived in this city?
A. Forty-nine years.
Q. Did you know the late Joseph Fabacher?
A. No, sir.
Q. Where are you employed?
A. New Orleans Picayune.
Q. In what capacity?
A. I am classed as assistant business manager.
Q. Was Joseph Fabacher subscriber to the New Orleans Picayune in 1896? *I*s so, state from what date to what date, and where was the paper sent to.
A. That name, Joseph Fabacher, appeared on our books on May 9th, 1896, as a subscriber for three months to Waukesha, Wisconsin. Paper was stopped August 8th, 1896. Bill was paid August 6th, 1896.

Cross-examination.

By Mr. DART:

Q. Do you know if Mr. Fabacher read any other paper?
A. I do not.
Q. You don't know if he subscribed to any other papers?
A. No, sir.

MATT. McENERY.

Sworn and subscribed before me this 18th day of June, A. D. 1897.

ARTHUR B. LEOPOLD, *Not. Pub.*

476 OCTAVE J. MOREL, Esq., being duly sworn and examined on behalf of opponent, testified as follows:

Direct examination.

By Mr. McCALEB:

Q. Where do you live?
A. 1730 Calhoun street.
Q. Did you know the late Joseph Fabacher?
A. As a neighbor.
Q. How long did you know him as a neighbor?
A. Last two years and a half.
Q. He resided there during that time?
A. Partly.
Q. What seasons of the year did he reside there?
A. I have no recollection.
Q. What place was he a resident of as far as you know?
A. I can't tell.
Q. You know that he lived at No. 1716 Calhoun street during the two years that you knew him?
A. Yes, sir; I judge so. 1716 is the number.
Q. It is one or two doors below; two numbers below?
A. A few houses.

Q. Did he have any domestic animals—horses, cows—up there at his residence?

A. Well, I saw a cow. I don't know whether it was his. I would see it grazing on the outside opposite his place. It appeared to be his.

Q. Kept in the yard?

A. I saw it on the outside opposite his place, grazing.

Q. Taken into his place?

A. Yes, sir.

477 Cross-examination.

By Mr. BUCK:

Q. Did he live there all the time during the two years?

A. I saw him only occasionally, as I went into the house.

Q. Do you know where he was when he was not in the city?

A. Not through my personal knowledge.

Q. Where did you hear he went to?

A. He went to Waukesha in summer; that's all I know.

Q. Never told you that he had a home in Waukesha?

A. Yes, sir; he had a place there.

Q. Never told you that he was going there to live?

A. No.

Q. When was the conversation that you had with him?

A. I don't know the date. He came and walked up to my place without any ceremony and formality and talked to me as a neighbor. We had some little conversation together, and he told me he had some business with my father many years ago; he told me in that way. Well, about two weeks before his death the old man was speaking to me about a sad misfortune that had happened to a neighbor; he had alluded to it and said, "When his time would come he would be ready to go;" and the old man said, "Old Fabacher, you are next." In about two weeks or ten days after he died. That is the last conversation I had.

By Mr. MCCALEB:

Q. You considered him a resident here, Mr. Morel, did you not?

A. Yes.

Q. You have known him for many years?

A. I have seen him up there for the past two years.

478 Q. How many members of his family lived there?

A. Daughter and a little boy.

Q. His wife, servants?

A. Yes.

Q. When he was away was his house watched or guarded?

A. They had a private watchman; I seen him going in and out.

O. J. MORREL.

Sworn and subscribed before me this 18th day of June, A. D. 1897.

[SEAL.] ARTHUR B. LEOPOLD, *Not. Pub.*

479 BERTIE SNEED, being duly sworn and examined on behalf of opponent, testified as follows:

Direct examination.

By Mr. MCCALEB:

Q. What is your profession?
A. I am a newspaper man.
Q. On what journal are you employed?
A. Times Democrat.
Q. How long have you been employed on that journal?
A. About five years.
Q. Did you know the late Joseph Fabacher?
A. No, sir; I did not know him.
Q. Who wrote this biographical sketch of Joseph Fabacher which appeared in the Times-Democrat of *Marhe* 4th, 1897?
A. (Witness examining account of sketch handed him.) I did.
Q. Where and from whom did you get the facts stated in that sketch?
A. I got them, I think, at the residence of the deceased and from his son.
Q. Do you remember which son?
A. I think it was Peter. I know Peter and Lawrence; also Tony. I don't know the others very well.
Q. Did he tell you where Mr. Joseph Fabacher was born; you say he was a native of Bavaria?
A. Well, I don't know if he told me that; I got that information from those who were there. I would ask questions and they would answer; I don't know if they came individually from his son; I just know I got the facts.

480 Q. This was at his residence?
A. My recollection is that it was uptown on Calhoun street, No. 1716 Calhoun street.
Q. Was it before or after his body was interred or what some would call the wake?
A. It was the day before the body was interred.
Q. How many persons, as far as you can remember, were in the house at the time, and who were present at the time you were making this memoranda?
A. There were three or four or five in the room.
Q. State those that you know of.
A. I don't know but one, and that was Peter, and I think there were one or two other brothers.
Q. Was Albert there?
A. I am not sure, but I think he was.
Q. To your best recollection, you believe he was there?
A. I couldn't say positively, but I think he was, Mr. McCaleb.
Q. Was Mr. Lawrence Fabacher there?
A. He was not there. I can say positively that Mr. Tony and Mr. Lawrence were not there in the room.
Q. Was his wife there?

14320

JOSEPH FABACHER.

A. In the room? I did not see her.

Q. Any female members of the family there?

A. Two young ladies were, arranging things on the mantlepiece. I don't know them.

Q. Then you got all these facts from his house, where his body was exposed the day before the funeral?

A. It was the day before the burial, but I don't know whether his body was exposed there; it was not in the room where I was.

Q. Did you read this biography which appeared in the
481 Times-Democrat of March 4th, 1897, to any members of the family after it was written?

A. No, sir.

Q. Do you know whether any of them read it?

A. No, sir; I do not.

Q. Any one speak to you about it?

A. I believe Mrs. Tony Fabacher told me about it, talked about it casually when I went by the house.

Opponent offers in evidence biographical sketch of Joseph Fabacher, which appeared in the Times-Democrat of Thursday, March 4, 1897, which witness wrote:

482 The Times-Democrat, March 4, 1897.

Offered by opponent.

JOSEPH FABACHER.

Death of an old resident and an esteemed citizen.

In the death of Mr. Joseph Fabacher, which sad event occurred yesterday, New Orleans lost one of its oldest and most substantial citizens and one who has been identified with the business interests of this city for more than half a century. Mr. Fabacher was in his seventy-third year. He was a man of splendid physique, looking very much younger than he really was. He was in very good health until about ten days ago, when he complained of feeling ill and was compelled to retire to his bed. When the physicians appeared it was discovered that there were serious internal complications, necessitating an operation. He was removed to the Touro infirmary, where the operation was performed, the physicians feeling sure that his unusually robust constitution would render the operation one of safety. Mr. Fabacher stood it well and it was thought was on the road to recovery, when two nights ago he suffered a relapse and gradually grew worse until the end came.

From the moment Mr. Fabacher became seriously ill until he died yesterday, at—

(Here follows photograph marked p. 183.)

483 7.40 o'clock, he received the most careful attention from the members of his family, his devoted wife remaining assiduously by his bedside day and night, and the skill of leading physicians of the city being brought into requisition.

Mr. Fabacher was a native of Bavaria, and came to this city fifty-three years ago, while yet in his teens. He succeeded in business through concentration and industry. Going into the restaurant business early in life, he made it a study, with the result that a large measure of success attended his efforts, and from a small lunch house, established two generations ago, his business grew until today Fabacher's restaurant is known as one of the prettiest and best in the South, and it is as well known in New Orleans as any other spot in the city.

Mr. Fabacher was largely interested in other business in-
484 terests of the city, and every one of them showed the influence of his advice and direction. He was a business man of exceptional ability and of rare industry and had a host of friends in the city in commercial circles who admired and esteemed him.

Mr. Fabacher was also interested in real estate. He was a firm believer in a great future for New Orleans, and years ago interested a great deal of money in real estate uptown, owning and renting a number of magnificent residences.

Several years ago Mr. Fabacher retired from the active management of the restaurant, turning it over to his sons, who have inherited their father's industry and ability to succeed, and who have maintained in the last few years the high degree of popularity and excellence to which Mr. Fabacher had brought it, besides which they have improved the restaurant in a great many respects.

Mr. Fabacher leaves, besides a loving wife, eight sons and three daughters. Joseph, the eldest son, is a merchant at Trilby, La.; Albert is well-known grocer on Prytania street, at the corner of General Taylor; Louis is in the bakery business, and Lawrence, Anthony, Peter, and John, and Miss Alice are in the restaurant. Jacob, aged sixteen, is the youngest child. The two daughters, besides Miss Alice, are Mrs. Barbara Broderick and Miss Lena.

The funeral will take place from the late residence of the deceased, 1716 Calhoun street, this morning, at 10 o'clock. Solemn requiem mass will be sung at the Jesuits' church, and the interment will be in St. Joseph's cemetery.

Proponent- object to same.

Cross-examination.

By Mr. DART:

Q. Did you write that in the presence of the family, Mr. Sneed?

A. No, sir.

Q. I suppose you took the memoranda that you gathered there and went back to your office and wrote a detailed sketch, a newspaper biography?

A. Yes, sir.

Q. I suppose it was made up from the suggestions that everybody present made?

A. Yes.

Q. You are not prepared to say that any one particular fact was given to you more than another, are you?

A. Generally.

485 Q. The idea was to get something interesting for the papers?

A. Yes, sir.

Q. Of course, you knew that when you heard he was dead that he was a resident of this city?

A. I knew him as such.

Q. And you knew he had a family of children prominent in the commercial world?

A. Yes, sir.

Q. An extensive family, more or less prominent in the city?

A. Yes, sir.

By Mr. BUCK:

Q. You gathered most of the facts from others than the family?

A. No, sir; I gathered the facts at the house. I don't know whether or not there were others besides the family; I know there were several in the parlor. I knew Peter personally, and I thought the others were sons; I don't know how many were there.

Q. How did you get the information; did you ask questions on your own accord?

A. I asked questions. We have a program to get the facts of a biography that way.

Q. And you touched it up to make it read al- right?

A. Yes, sir.

By Mr. DART:

Q. I judge many of the facts were gathered from your own knowledge of the man and his surroundings?

A. General information.

By Mr. MCCALEB:

Q. From whom and from where did you learn that "Mr.

486 Fabacher leaves, besides a loving wife, eight sons and three daughters. Joseph, the eldest son, is a merchant at Trilby, La.; Albert is a well-known grocer on Prytania street at the corner of General Taylor; Louis is in the bakery business, and Lawrence, Anthony, Peter, and John and Miss Alice are in the restaurant. Jacob, aged sixteen, is the youngest child. The two daughters besides Miss Alice are Mrs. Barbara Broderick and Miss Lena"?

A. I got that information at the house; I don't remember from whom; I don't know the persons sitting in the parlor.

Q. From the members of the family there?

A. I don't know if they were all members of the family; I know positively that Peter was there all the time. Two young ladies came in the room; I don't think they took any part in it.

Q. From whom did you get the information that "the funeral will take place from the late residence of the deceased, No. 1716 Calhoun street, this morning, at 10 o'clock. Solemn requiem mass will be sung at the Jesuits' church, and the interment will be in St. Joseph's cemetery"?

A. I don't remember who told me that; some of those present.

Q. Who told you that "New Orleans lost one of its oldest citizens, and one who has been identified with the business interests of this city for more than a half a century"?

A. I put that in on my own account.

Q. Who told you his age?

A. I don't remember who told me his age.

Q. Did you hear anything about his living in Waukesha and being a citizen there at that time?

A. I did not; I heard it since.

487 Q. Who told you that "he was removed to the Touro infirmary, where the operation was performed"?

A. Some of those present; I don't remember who it was.

Q. Who told you that he was a native of Bavaria, and came "to this city fifty-three years ago"?

A. I could not answer that.

Q. Where did you get that wood-cut from?

A. I don't know; I don't think I had anything to do with it.

Q. Did you get a photograph up at the house, from which this wood-cut was made?

A. I am inclined to think we had a cut already in the office; his picture had been used before; I don't really know where I got that photograph: I don't remember; I don't think I did.

Q. You did not ask anybody where Mr. Fabacher was a citizen of?

A. No, sir; I put that.

Q. You took it for granted that he was an old resident of this city? You newspaper men have a knack of getting things and fixing them up to suit yourself? I don't mean that you put in anything wrong.

A. Of course, in a matter like this, we don't take as much care as in legal matters; we don't ordinarily say anything in the biography of a deceased person that anybody can take offense at.

Q. You were there where the body was, and you took it for granted that that was his residence. You did not ask anybody the question?

A. I did not.

By Mr. McCaleb:

488 Q. Was there a crape on the door and a funeral notice attached to it?

A. I don't remember.

BERTIE SNEED.

Sworn and subscribed before me this 18th day of June, A. D. 1897.

[SEAL.] ARTHUR B. LEOPOLD, *Not. Pub.*

1432

OFFERED BY OPPONENT.

Ex. 3. J. H. S., Rep.

Washburm

111 CANAL ST.,
NEW ORLEANS, LA

No. 341.

THORMANN
v. } P. 490.

489 W. W. WASHBURN, being duly sworn and examined on behalf of opponent, testified as follows:

Direct examination:

Q. Mr. Washburn, where do you reside?
A. My place of business is on Canal street, in this city.
Q. How long have you lived here?
A. Forty years.
Q. Did you know the late Joseph Fabacher?
A. I knew him by sight.
Q. Look at this photograph—is that his photograph?
A. (Witness examining picture handed him.) Yes, sir; that is his photograph. I made the copy; that is a copy from my place.
Q. At whose request?
A. I don't know.

Opponent offers photograph in evidence. Proponent reserves right to object.

(Here follows photograph marked p. 490.)

Q. Mr. Washburn, did you regard him as a resident of this place?
A. I did; I knew him here.
Q. All the time?
A. Yes, sir.

Cross-examination.

By Mr. DART:

Q. You don't know that he went to Waukesha?
A. I knew of his going away.
Q. Didn't you lose track of him during the last two or three years?
A. I was not intimately acquainted with him.
Q. Only a passing acquaintance with you?
A. Yes, sir.
491 Q. Don't you know that he moved everything away from here and lived in Waukesha?
A. I knew that he has been away; I saw that from the newspapers. He never told me.

W. W. WASHBURN.

Sworn and subscribed before me this 18 day of June, A. D. 1897.
[SEAL.] ARTHUR B. LEOPOLD, *Not. Pub.*

G. H. WORMUTH, being duly sworn and examined on behalf of opponent, testified as follows:

Direct examination.

By Mr. MCCALEB:

Q. Mr. Wormuth, where do you reside?
A. 1835 Canal street, New Orleans.

Q. Where is your place of business?
A. 624 Custom-house street; jeweler.
Q. How long have you been living in this city?
A. Two years.
Q. Did you see the late Joseph Fabacher?
A. Yes, sir.
Q. Where did you first work as watchmaker?
A. At Griswold.
Q. How long have you been in that store; where are you now; who did you succeed?
A. Hyber.
Q. Did you ever work for Joseph Fabacher?
A. Yes; he was a customer of mine.
492 Q. How long did you know him?
A. Since I am in the business.
Q. Did you ever repair any watches or other articles of jewelry for him?
A. Yes, sir.
Q. How long did you see*n* him before his death?
—. About a couple of months.
Q. What work, if any, have you done for him lately?
A. Repairing watches.
Q. What kind of watches?
A. One was a Swiss watch.
Q. What did you do with these watches?
A. Delivered them.
Q. Have them back to him?
A. Yes, sir.
Q. What seasons of the year did you see him here?
A. I don't know. I never paid any particular attention about that.
Q. Where was his home, as far as you know?
A. I knew that he lived away up town, in New Orleans.
Q. Why did you regard this his home?
A. He has *has* got his house and residence there.
Q. Where did he die, here in New Orleans?
A. I suppose so; the newspapers said so.
Q. You saw the advertisements in the newspapers?
A. Yes, sir.
Q. Where do all the members of the family live, that you know?
A. Here. I knew some of them.
Q. Do you remember of repairing a watch which showed the days of the week and the dates of the month?
A. Yes, sir.
493 *A. Yes, sir.*
Q. Did you repair that?
A. I did not. It was a very fine Swiss watch, with automatic works, showing the change of dates.

GUST. WORMUTH.

Sworn and subscribed before me this 29th day of June, A. D. 1897.

ARTHUR B. LEOPOLD,
Notary Public.

LEWIS GRAHAM, Esq., being duly sworn and examined on behalf of opponent, testified as follows:

Direct examination.

By Mr. McCALEB:

Q. Mr. Graham, where do you reside?
A. 1704 Calhoun street, New Orleans.
Q. How long have you lived there?
A. Five years.
Q. How long have you lived in this city?
A. About forty-five years.
Q. In what business are you engaged?
494 A. Printing.
Q. You are a member of the firm of L. Graham & Son, Limited?
A. I am.
Q. One of the largest, if not the largest, houses in the city?
A. It has that reputation.
Q. Mr. Graham, did you know the late Joseph Fabacher?
A. Yes, sir.
Q. For how many years did you know him?
A. I have known Mr. Fabacher for a number of years; not intimately. I have known him intimately since he became a neighbor of mine.
Q. When did he become a neighbor of yours and where?
A. About two years ago, I think it was—thereabouts—he became a neighbor of mine, and then I became acquainted with him.
Q. Where did he reside, then, at that time?
A. Next door to me, on Calhoun street—No. 1716; it is several numbers apart; anyhow, the next house to me.
Q. Who lived there with him, Mr. Graham?
A. His family lived there with him.
Q. How many of his family were there?
A. I am not acquainted with his household, but I think he had a daughter, his wife, and grandchildren, I think.
Q. Did he have any domestic animals there that you know of—horses, cows, anything of that kind?
A. He had a cow.
Q. Where did he die?
A. I heard he died at the Touro infirmary.
Q. From what place was he buried?
A. I did not go to the funeral. I was at the house before the funeral, but did not go to the burial grounds.
495 Q. Where was the funeral from?
A. From his house on Calhoun street.

Q. Mr. Graham, of what place was he a resident?

A. Well, I thought, from being a man pretty well off, that the place he was occupying as his home, and that this was his residence, but I met him about four weeks, very early in the spring, at the gate. He came to me and said, "I am going away; I am going home." I said, Where? Said he, "To my home in Waukesha." "You are going early, are you not?" "I am not well here. I am always well up there, and I have a nice home, all conveniences, and I think — should go up there." I said, "I am sorry to lose you." I said, "What are you going to do with that house?" "I am not going to do anything with that. I am going to sell out my furniture," leading me to believe that I might draw an inference that the house did not belong to him.

Q. The- he as much as told you, and you drew that inference, that the furniture did not belong to him?

A. Yes, sir.

Q. You say he lived there about two years prior to his death?

A. About.

Q. How long prior to his death was it that you had this conversation?

A. It could not be more than six weeks.

Q. Mr. Graham, while he was residing there on Calhoun street for the two years that you knew him there—about what time in the year did he go away and about what time did he return in 1895?

A. Well, he went away very early. He came back very late.

496 Q. In 1895, year before last?

A. The year before last—I can't recollect that. I had no object in paying any attention. It might have been in November.

Q. Last year what time did he go away?

A. Well, I could not say positively. It appears to me that he went away very early.

Q. Some time in May?

A. It might be previous.

Q. What time did he return?

A. Very late in the fall. It was very late. I know that we had some cold weather. I thought he was to remain up there all winter.

Q. Did you see him the latter part of the fall, the middle months, and the beginning of the spring—March and April?

A. No; I shouldn't think so.

Q. Did he have any servants there at that house?

A. Yes, sir.

Q. Who attended to his place when he was absent?

A. The place looked as if there was nobody there.

Q. No private watchman was employed?

A. Yes; I used to see a watchman going in there.

Q. Were you ever inside of his house on Calhoun street?

A. Once before it was finished. I used to go frequently while it was building, and also when he died.

Q. Before he occupied it?

A. Not since it was occupied, except to see the corpse.

Cross-examination.

By Mr. BUCK:

497 Q. You were under the impression or thought that he would remain all winter — Waukesha. What was your reason for thinking that he was going to remain there all winter?

A. No special reason, but people going there at that time usually come back before December. I had no idea at that time, and did now know the condition of things until afterwards.

Q. This conversation spoken of, when he spoke of Waukesha as his home—it took place last time?

A. It took place last spring, some four or five weeks prior to his death. I can't say exactly.

Q. In that conversation he told you that he was going to his home in Waukesha?

A. Yes, sir.

Q. Did he say anything about coming back?

A. He led me to believe that he was not coming back, because he was going to sell out his furniture.

Q. That was the impression left upon your mind, that he was going to remain permanently in Waukesha?

A. That idea impressed me, and it was somewhat strong, that that was his home, and that he was going there to live, as he said he had a nice home and everything comfortable, and that he was living there for some time, and that he was going to stay there; so from what he said, although he did not tell me positively, I thought he was going to stay there. That seemed to change my own mind about his status, his residence, and was somewhat astonished at that time, but a few weeks after his death I learned the exact state of things.

By Mr. MCCALEB:

498 Q. Up to that time you had this conversation how did you regard his place of residence?

A. Previous to that time I did not know anything about him; I had some doubt that he owned that property, for the reason that Mr. Lawrence Fabacher, I heard, was building it for himself, and he was there all the time and consulting with the contractor, and I thought he was building that house.

Q. Is that property for sale now?

A. I don't know.

Q. What is the custom of residence of New Orleans who have the means of going away in the summer?

A. Well, I don't know; they rent out their houses or they put a keeper in it; they go and come different lengths of time.

Q. For people of means is it usual and customary for them to remain here or spend their summers away?

A. Those who can afford it and people in bad health do so. I have been going away for the past fourteen years, with the exception of last year. I am a *single* man and have no one but my wife

and haven't much expenses, but, as you asked my opinion, I have to say that the health of the family depends a great deal.

By Mr. DART:

Q. Is it usual for a man to leave early in the spring and come back in the winter—I mean is it a general rule to go away early in May and come back in November?

A. That depends on a man's business.

Q. As a matter of fact, when is the business season open?

A. About the first of September; generally about the middle of October the season begins for business.

Q. Everything is supposed to be in full swing about October?

A. The commercial season commencing about the 1st of September.

499 Q. Very few people leave here in May or June?

A. Except those going to foreign countries.

By Mr. MCCALEB:

Q. Was Mr. Fabacher in business while he resided on Calhoun street?

A. No, sir.

Q. Then the rule governing ordinary classes of business men would not apply in this case, would it?

A. I could not say that.

L. GRAHAM.

Sworn to and subscribed before me this 18th day of June, A. D. 1897.

ARTHUR B. LEOPOLD,
[SEAL.] *Notary Public.*

500 JOSEPH DAVIS, being sworn and examined on behalf of opponent, testified as follows:

By Mr. MCCALEB:

Q. Did you know the late Joseph Fabacher, who died about the 3rd of March, 1897?

A. No, sir.

Q. Was your daughter ever employed by him?

A. Yes; my daughter work for him about a year.

Q. What time did they go away?

A. I don't know; about this month or next.

Q. May or June?

A. Yes, sir.

Q. How long did they stay away?

A. Well, I don't know; stay away about three or four months.

Q. Before they came back?

A. Yes, sir.

Q. Did she go away and come back with them?

A. Yes, sir.

Q. What did she do for them?

A. She worked for Mr. Fabacher; that's all.

Q. When they went away what was the idea; was she to come back or stay up there?

A. I can't tell; my daughter is old.

Q. Got any children?

A. My daughter got one child; she stay with me at my house when my daughter is gone.

By Mr. BUCK:

Q. Where is your daughter?

A. In the city.

501 Q. A servant for Mr. Fabacher's family?

A. Yes, sir.

Q. That's all you know about it? You don't know whether she went away to Waukesha to stay or come back again?

A. No, sir.

By Mr. MCCALEB:

Q. You know she did come back?

A. I don't believe she was to come back again; she stayed there about a year or little more, since she worked for Mr. Fabacher.

By Mr. BUCK:

Q. She stayed a year or more in Waukesha?

A. Yes, sir.

Q. She went away about the month of June?

A. This month or a month after.

Q. Early in May, or late?

A. Early in the month of May; yes, sir.

——.

Sworn to and subscribed before me this — day of June, A. D. 1897.

——.

502 T. P. THOMPSON, sworn and examined on behalf of opponent, testified as follows:

By Mr. MCCALEB:

Q. Where do you reside?

A. 1722 Calhoun street, New Orleans.

Q. How long have you lived there?

A. It must be about four years.

Q. Did you know the late Joseph Fabacher?

A. Yes, sir.

Q. Where did he live?

A. Adjoining me; he died next door to me.

Q. How long did you know him there?

A. I first knew him, I think it was, about year before last.

Q. About two years ago?

A. The latter part of the year before last.

Q. Was this a family residence that he lived in there?
A. I suppose it was.
Q. How many rooms?
A. I don't know the number of rooms.
Q. Was it furnished or unfurnished?
A. I think it was furnished; I went in there only once—at the time of the funeral. It appeared to be furnished.
Q. What portion of the year did you see him?
A. During the winter months.
Q. About what time would he come and go?
A. I can't be accurate as to time; I should judge a little before Christmas; it was just two or three weeks before Christmas time. I remember now they had a big time of it next door. It was very cold.
503 Q. Was this in 1895?
A. I think it was in 1895.
Q. About what time did he go away in the spring of 1896—about?
A. I should judge quite early for people to go away; it must have been early—the early part of May, I should think.
Q. And when did he return in the fall of 1896?
A. That was late again; I don't know the date; it was cold, and everything was closed up; it must have been in the latter part of November, I should judge.
Q. Did he have a family living with him during the time?
A. Mrs. Fabacher was all the family I knew.
Q. Any children or servants?
A. I think there was a servant, a woman; I am very sure there was a woman servant; she did the work.
Q. Did he have any domestic animals of any kind?
A. I never seen any.
Q. Have you seen a cow?
A. I saw a cow across the street in an open lot.
Q. In his gate?
A. I can't see in his gate or what goes on in his house; we have a cottage, a one-story house with a high fence.
Q. How many stories is the house he occupies?
A. One story; it has an attic room.
Q. Did you see the advertisement of his funeral in the newspapers?
A. Yes, sir.
Q. Large crowd at the funeral?
A. Quite a crowd.
Q. About how many people?
A. Quite a crowd; I should think a number of gentlemen—maybe twenty or thirty gentlemen—that came there, besides
504 the number of sisters, orphan children, one or two clericals, and the family.
Q. Did you know where his home was?
A. Well, it was the general impression in the neighborhood that Mr. Fabacher was only to stay here a few months in the winter

time. I had frequent talks with the old gentlemen out in front of the place. I never saw him until after he came there to live. The impression was that he lived in some place north, in Wisconsin somewhere. The way I gathered that, if it is right to tell you, when he was building his house close to mine I was a little bit incensed, but I got over it shortly. I approached him and asked him to buy my place and make a garden out of it; he said he did not care for it; that I might see his son; that he had no interests here; that he had a summer place somewhere in the North that gave him all the amusements he desired; he took no interest in buying anything.

Q. Did you have any conversation further about his residence?

A. I came down to see Mr. Peter Fabacher——

Q. Never mind what Mr. Peter Fabacher said. What was said further about his residence up there?

A. He spoke to me about the comfortable place he had up North, and impressed everybody with that fact.

Q. Who took care of his house?

A. It seemed locked up; grass growed in the house.

Q. Did he have a private watchman?

A. There was a watchman around there.

Q. Summer before last?

A. That watchman is a very familiar figure; I think he was there.

505 Q. Did you know of any members of his family besides his wife who lived there?

A. I don't think they had any regular occupants there. I often saw their grandchildren, some young ladies and a boy who came from school, and he would stay a few days or a week or two. There were no permanent people there except the old lady and gentleman. In fact, I never noticed. There were visitors there. I would notice they would come up on Sunday evenings, have a jolly time. It was sort of meeting place for the children.

By Mr. BUCK:

Q. When Mr. Fabacher went away in the spring, he went away much earlier than people usually go?

A. Quite early.

Q. Then your impression was, as you have answered Mr. McCaleb, that from your conversation had with Mr. Fabacher you considered that his home was in Waukesha, Wisconsin?

A. That was my impression.

Q. The impression left on your mind that Waukesha was his home?

A. Yes, sir; as he would not buy the place I offered to sell him; that was the impression it left on me.

Q. You know he came down a short time to see his children?

A. We would talk about many things, but I noticed it seemed to be a hobby with him to speak about his place in Waukesha. I never talked very much to him. Mr. Morel would be able to tell you more. He used to chat with him often.

Q. You were going to say something about the rumors or reports that were made about his residence.

506 A. I was told—I don't know from what source it came—that he was to be surprised with a home when he came there; that he did not know there was a house, and that there was a surprise in store for him. I took particular notice of the opening of the house, as the neighborhood is a desolate one, and we are much interested in neighbors, and I noticed that there was a big opening of the house; they kept it going the whole evening; it was a sort of surprise for the old man; it was very cold; I know we don't keep our windows open except in warm weather.

Q. And your impression was that it was a family gathering to welcome the old gentleman down in the winter to see his children?

A. Yes, sir.

By Mr. McCaleb:

Q. What business was he engaged in?

A. He appeared to be in no business.

Q. Is it a fact that when people have no business their time for going away and coming back is not as punctual as those who are engaged in business?

A. A man is free, and can go and come when he likes.

Q. When does the business season open?

A. My business opens about the 15th of September, when I must be on the ground.

Q. And closes about when?

A. Well, I should think about the middle of May or June 1st.

By Mr. Buck:

Q. Men of business don't go away on summer vacations until June or the middle of July, except people who have summer

507 homes in the immediate vicinity.

A. If I get away at all, that is about the time.

T. P. THOMPSON.

Sworn to and subscribed before me this 25th day of June, A. D. 1897.

ARTHUR B. LEOPOLD,
Notary Public.

508 In County Court, Waukesha County, Wisconsin.

In the Matter of the Probate of the Last Will and Testament of Joseph Fabacher, Deceased.

State of Louisiana, }
Parish of New Orleans, City of New Orleans, } *ss*:

I, Arthur B. Leopold, a notary public in and for said parish and State, duly commissioned and sworn, do hereby certify that the depositions of Joseph Davis, Louis Graham, M. McEnery, Octave J. Morel, Bertie Sneed, T. P. Thompson, W. W. Washburn, and

G. H. Wormuth were taken before me at my office, in room 302, Liverpool & London & Globe building, in the city of New Orleans, in said parish, on the 17th day of June, A. D. 1897, at 3 o'clock p. m.; that they were taken at the request of the contestants in the above-entitled matter upon verbal interrogatories; that it was reduced to writing by myself; that they were taken to be used on the trial in the matter of the probate of the last will and testament of Joseph Fabacher, deceased, now pending in the county court in and for Waukesha county and State of Wisconsin, and that the cause or reason for which said depositions were taken is that the said witnesses above named are necessary and material witnesses for said contestants upon the trial of the above-entitled matter, and said witnesses are not residents of the State of Wisconsin, but reside in and now are in the said city of New Orleans, State of Louisiana, and that an issue of fact has been joined in the above-entitled matter; that Messrs. E. Howard McCaleb and Buck, Walshe & Buck and Henry P. Dart attended at the taking of such depositions, and that said depositions were taken in pursuance of the annexed stipulation; that said deponents before examination were each sworn to testify the truth, the whole truth, and nothing but the truth relative to said matter, and that said depositions were carefully read to each said deponents, respectively, then subscribed by them respectively.

ARTHUR B. LEOPOLD,
Notary Public.

509 In the Matter of the Estate of JOSEPH FABACHER, Deceased, on the Opposition of Mrs. Antoinette Thormann, Born Fabacher, to the Probate of the Last Will and Testament of said Joseph Fabacher, Deceased, Testate, in the County Court, Waukesha, Wisconsin.

It is hereby stipulated by and between Messrs. Carney, Clasen and Walsh, attorneys of record for opponent and contestant, Mrs. Antoinette Thormann, in the above-entitled matter, and Messrs. Ryan & Merton, attorneys for proponent in the above entitled matter, that said opponent may take the depositions of witnesses at the city of New Orleans, Louisiana, before Arthur B. Leopold, notary public, at the office of said Arthur B. Leopold, room 302 Liverpool, London & Globe building, New Orleans, Louisiana, at any time between this date, June 10th, 1897, and June 19th, inclusive, upon giving twenty-four hours' notice to Messrs. Buck, Walshe & Buck, attorneys representing the firm of Ryan & Merton, attorneys for proponent in this matter.

CARNEY, CLASEN & WALSH,
Per E. HOWARD McCALEB,
Att'ys for Mrs. Antoinette Thormann,
Opponent and Contestant.
BUCK, WALSHE & BUCK,
DART & KEMLAN,
For Proponents.

510 STATE OF WISCONSIN:

In the County Court of Waukesha County.

In the Matter of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Index.

Henry Rice	Pages	3	to	16
Bernard McCloskey	"	16	"	18
Gen. Eugene May	"	18	"	23
Otto Thoman	"	23	"	33
Frank Pace	"	33	"	38
Jos. Schutten	"	38	"	45
Thomas Nicholson	"	45	"	49
Fritz Jahncke	"	49	"	51
Henry Wellman	"	51	"	65
Jeff. C. Wenck	"	65	"	69
R. A. Corbin	"	69	"	73
Christian Schopp	"	73	"	81
Henry Haller	"	81	"	88
George Wegmann	"	88	"	99
Peter Wegmann	"	99	"	105
John Malone	"	105	"	107
Jos. D. Taylor	"	107	"	111
Henry D. Hart	"	111	"	114
Simon Bloch	"	114	"	118
H. H. Hodgson	"	118	"	121

511 STATE OF WISCONSIN:

In the County Court of Waukesha County.

In the Matter of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Depositions taken on the part of proponent of several witnesses, at New Orleans, La., this 11th day of June, A. D. 1897, at 3 o'clock p. m., at the office of Messrs. Buck, Walshe & Buck, 3rd floor, Masonic Temple.

It is hereby stipulated and agreed by and between Messrs. Ryan & Merton, attorneys of record for and on behalf of the proponent, of the last will and testament of the said Joseph Fabacher, deceased, and by Messrs. Carney, Clausen & Walshe, attorneys of record for and on behalf of Antoinetta Thorman, contestant, in the above-entitled matter, *and* the depositions of the several and different witnesses hereinafter named shall be taken for and on behalf of said proponent by giving at least twenty-four hours' notice of the taking of said depositions, E. Howard McCaleb, Esq., counsel representing the said contestant, and on behalf of Carney, Claussen & Walshe, of Waukesha, Wis., the attorneys of record of said contestant, and in the presence of Messrs. Ryan & Merton and Henry P. Dart, repre-

senting the said proponent, and that all further notice and formality required by the statutes of the State of Wisconsin as to the
512 taking of depositions is hereby waived, and the same stipulation is entered into between the parties regarding any testimony which may be taken for and on behalf of said contestant, Mrs. Antoinetta Thorman, hereafter, in accordance with the written stipulation heretofore entered into between the said parties, and either of said parties may use the depositions taken therein in accordance with this stipulation or any other depositions taken at the city of New Orleans by either party on or before the 19th day of June, 1897, the same privileges being extended to the counsel representing the contestant.

It is further stipulated that said depositions on the part of said proponent may be taken before Arthur McGuirk, notary public, and the same may be used upon the hearing of said matter in the county court of Waukesha county or the circuit court of Waukesha county, as said matter should reach, or in the supreme court of the State of Wisconsin, the same as if the regular notice and formalities had been complied with as required by the statutes., this stipulation being entered into for the mutual convenience of counsel.

In witness whereof I sign my name & affix my official seal.

[SEAL.] ARTHUR McGUIRK, *No. Pub.*

513 HENRY RICE, Esq., a witness for and on behalf of the proponent, being first duly and solemnly sworn by Arthur McGuirk, notary public, deposes and says:

Direct examination by Mr. BUCK:

Q. How long have you lived in the city of New Orleans?

A. Well, let's see. I have been living down here since 1840; that is fifty-five years ago.

Q. What has been your business during the last twenty-five or thirty years?

A. Exclusively hardware.

Q. Connected with one of the largest establishments of the city?

A. Well, we always thought so; about as large as there were.

Q. Did you know the late Joseph Fabacher?

A. Yes, sir.

Q. Are you a member of the well-known firm of Rice, Born & Co. in that business?

A. Yes, sir.

Q. How long did you know Mr. Fabacher before his death?

A. Well, I have——

Q. About?

A. About forty years.

Q. What business, if any, was he engaged in during the last five years or so?

A. Well, to my knowledge, being a neighbor, living within a few blocks of him, I had occasion to see him every day; almost every morning I passed there. I didn't know him in business at all, except attending to his real estate around.

Q. That is, he had retired from business?
A. Yes, sir.
Q. Where did he live in 1893 and 1894?
A. 1893 and 1894?
514 Q. Yes; about.
A. Corner of Aline and Prytania.
Q. Do you know when he moved away or sold out, when he moved away from here?
A. Yes, sir.
Q. When was that?
A. I was talking to him when he—well, you know, he made several trips to Waukesha. Do you mean the first trip or the last one?
Q. I mean if you can answer that particular question, and we will come to that afterwards. When did he give up his house in which he was living on Prytania street?
A. Well, I should say in—that was a year ago or two years ago. He was out there, and he went to Waukesha and he came back again, but finally—that is, to wind up with the business—he left about a year ago, about a year ago.
Q. Then he was in the habit of going to Waukesha in late years?
A. Yes, sir.
Q. Have you had any conversation with him during this time that he was going to give up his house on Prytania street, in regard to his intention in that respect?
A. Yes, sir.
Q. Well?
A. I was there one morning and saw a notice of property for sale along there, and I had a talk with him.
Q. You live in that neighborhood?
A. I was obliged to go down that corner every morning. I live right there; and I asked him, "I see you have got the property up for sale," and he says, "Yes; it has been a great deal of annoyance to me, and I have concluded that I am going to sell all my property and put my effects in shape, where I will have no plumbers,
515 no painters, or no people to annoy me as they do here. There's somebody pulling at the gate bell, wanting to come around and fix something, all the time," and he says, "I will get out of that, and I will put it into something," and he made a motion with his fingers this way—that is, that he was going to put it into bonds, that way, and says, "You can put them off"—he will have them in his pocket where they won't be taxed or anything like that.
Q. What idea did he convey to you by making this gesture with his fingers that you speak of?
A. Well, that was——
Q. That meant the use of shears, did it?
A. I was satisfied right there that he was going to take this money out of real estate and put it into bonds and cut the coupons off. That was the motion.

Q. Did he at that time say anything to you about his future residence, where he would spend his time, his life?

A. Oh, yes; he told me, "I haven't got any more use for New Orleans." He says, "If it wasn't for coming down and seeing the children, I wouldn't come down here at all." He spoke of having tried the summer and a little winter up there, and said he didn't stay the whole winter, but a part of it; but I think he must have been gone between eight and nine months; but he thought he could stand the climate up there; it agreed very much with him, and he was very well pleased. "I have my horses there and carriage and all, and I am going back there as soon as I can," and he bragged he had such a home, and he says, "It is a great place for fine horses," he said, "and good-looking women," and talked that
516 way, and talked of twenty-dollar gold pieces. He had a bag full of them, showing them to me. I am satisfied that he was bent on just staying there. He just lived only in Waukesha, and couldn't get him interested here at all.

Q. Did he describe his house to you in Waukesha?

A. Oh, yes; half a dozen times.

Q. What did he tell you about it?

A. Well, he told me he had about, I think I understood it, something — sixteen or seventeen thousand dollars in it, built up on a high place, and had fine water, and would like to have me very much to come there and spend a little while with him.

Q. What, if anything, did he say about going there permanently and living there?

A. Well, that was his calculation. I know he made a remark one day—I used to go down of an evening; there would be a party of us going there to play euchre, and he says "I don't believe I will have many more chances to play with you, for I am going away from here for good," just that way, and it sort of broke up our game. You remember the euchre parties we had there? (speaking to Mr. Lawrence Fabacher), and declared that he was going away; that's all, and we would lose one of our four in the party that we could depend on.

Q. Did he say anything about his being buried anywhere or dying or anything of that sort?

A. No, sir; he told me—he says—he did make a remark to this effect; he says, "I am going there and am going to stay there. I have all my interests there, and I expect to die there." Just that way.

Q. That was about the time that he was selling out and talking about — away?

A. Yes, sir; that was right after his closing out here.

517 Q. Do you know as a fact that afterwards he did go there?

A. I know he did.

Q. Did you see him much during the last visit before his death?

A. Yes, sir.

Q. Did you have any conversation with him yourself?

A. Well, no more than just that same thing. He said he was here; that he wished he was back there. He wasn't feeling as well

here as he was if he had been back. He was a little bit under weather when I saw him. I think it was about ten days before he died. He must have been sick.

Q. Did he say anything about what brought him down here and why he came?

A. No, sir; that I couldn't say.

Q. He spoke of immediate intention of going back there?

A. Oh, yes, sir.

Q. Did or did not his conversation at that time leave upon you the impression that he was here upon a visit to the members of his family?

A. He was here visiting, because he told me—says he, when I asked him why he didn't move his horses down, he said, "It wouldn't be worth while at all. I am going right back again."

Cross-examination by Mr. McCaleb:

Q. When was it that you had this conversation with him about his leaving here to go to live at Waukesha?

A Well, if I knew just about the time he was going—that was his last—you see, he went several times. Do you mean the last time?

Q. No; when he sold out.

A. It was just about that date. I couldn't say. It was after he had closed and got everything sold out.

518 Q. When did he commence living on Calhoun street, in this city?

A. Well, I don't suppose he lived there more than—I don't think he could have lived there a month before — died, did he?

Q. Never mind asking them.

A. It was a very short time after he came here. He was in the store and told me he wasn't feeling very well and went home, and I heard a few days afterwards that he was dead.

Q. Did you see him here in the winter of 1895 and 1896?

A. I can't say I did; not right down in the winter; no, sir.

Q. Did you see him here in the fall of 1895?

A. I saw him in the summer, I know.

Q. You saw him in the summer of 1896?

A. Well, it was before he started.

Q. It was before he started? When did he leave here in 1896?

A. Well, he left here to spend the summer; now, I don't know exactly what month.

Q. What month?

A. Now, I couldn't tell you that—May or June—about the time he was leaving. He generally left about——

Q. Where had he been living before he left here in May or June, 1896?

A. Where had he been living?

Q. Yes; what place in the city?

A. Corner of Aline and Prytania; that is the old homestead there.

Q. When was it you saw notices on the property posted up for sale?

A. That was in the early part of—well, we are in 1897; must have been in 1896; I couldn't say exactly; it might be 1895; I am not sure, but either 1895 or 1896.

Q. How old a man was Joseph Fabacher at the time of his death?

519 A. Well, we had many a discussion on that. He always claimed that he wasn't any older than I am, but I am 67 now, and I always put him about 71 *or* 72. I couldn't say exactly, but——

Q. When was it he told you he was going back to Waukesha?

A. The last time?

A. Yes.

A. Well, that is just about two or three weeks before he died, when he was in the store.

Q. In what store?

A. And told me—I was talking about it; then he told me—he says, "I don't want to live here;" he says, "I am feeling bad and I want to go right back again."

Q. Did you go to his funeral?

A. Yes, sir.

Q. Why did you go there?

A. My God! I felt it my duty, as an old friend of the man.

Q. How did you know it?

A. What; Fabacher'- death?

Q. Yes.

A. It was announced in the papers.

Q. What papers did you see it in?

A. I think I saw it in the afternoon paper. It was common street talk—Fabacher dying; everybody knew it.

Q. He was very well known here?

A. He was very well known here.

Q. Had a large circle of friends here?

A. Well, yes, sir; he did.

Q. He was well liked by his friends?

A. (No answer.)

Q. Did he have a big family here?

A. Well, I should judge so.

520 Q. How many of them do you know?

A. Well, upon my word, it was so mixed up here—the Fabachers—I couldn't tell you one from the other, but I know that he told me that twenty-two of them was his own—something like that—and he went on, thirty-six, I believe, grandchildren. Oh, he had a car-load of them here.

Q. He was very much attached to his family?

A. Very much, indeed.

Q. They all lived here?

A. All lived here. Now, I would like to state to you that this man and myself were very intimate and we talked almost daily. He used to tell me a great deal of little things that I don't think he

would tell anybody else, hardly. We were so confident of each other and he was always very proud. He had good boys. He has told me that.

Q. How many boys did he have?

A. Oh, great God!

By Mr. BUCK:

Q. Name some of those that you know best.

A. Well, there was—you see, the first name is what gets me. You could see the Fabacher wagons running around all over town, bakery wagons and grocery wagons and beer wagons. Now, there was Peter, John, and Jack, and it went on that way. I am satisfied that in my store I have got names of half a dozen in there.

Q. You deal with them all, don't you?

A. Indirectly, yes. They all come in. They are all in business.

By Mr. MCCALEB:

Q You went to his funeral because you saw the funeral notice in the newspapers?

A. Well, now, to tell you right straight, I read it. I knew all about the old man dying and there was quit- a time around about the store and I went to that funeral; very seldom went to a funeral, but I went to that one, sure.

521 Q. Big funeral?

A. Very large funeral, very large.

Q. He was very well known here?

A. Yes, sir.

Q. Did the old man drink?

A. Sir?

Q. Did the old man drink?

A. Well, he had his ice box and he had all little notions in there, but I can't say that I really ever saw that man under the influence of liquor, so much so that he wouldn't know what he was doing. I never saw him under the influence of liquor. I can*t* say that positively, and I have been with him a good deal.

Q. When do you call a man under the influence of liquor?

A. Well, now, when he don't know what he is doing, really. I never saw him in that fix. He always knew everybody that came around and was pleasant, sat down and had chats with them, and I always thought that he had his reason and knew what he was talking about and could play a mighty good game of euchre, I know.

Q. Who represented him here when he was gone; who was his agent?

A. That I couldn't tell you; couldn't tell you that exactly, but if I was going to look for his friend to represent him, I should have gone to see Mr. Lawrence Fabacher here. I don't know but I should have hunted him up if I had particular occasion or had any business.

Q. Mr. Lawrence was his favorite son, so far as you know?

A. Well, that is pretty hard to tell you. He was the eldest boy and appeared to always attend to his father's business for him.

By Mr. BUCK:

522 Q. What disposition of mind was Mr. Fabacher as regards forming his own ideas? Was he a man of good, strong will?

A. He was that, you bet. Allow me to give you one instance. The time you boys wanted to go into a lumber concern you had a pretty hard old time. He came up to me about it——

Q. Well, that was nothing to do with this case; but he was pretty hard to—he was a man who acted upon his own judgment?

A. Yes, sir; he did that.

Q. And he had a clear enough head to do it?

A. Yes, sir.

Q. He was a good business man?

A. Yes, sir. He always managed to come out on the right side, no matter what he was doing.

Q. He was self-reliant in his own affairs?

A. Yes, sir. He knew what he was doing.

Q. Acted on his own judgment?

A. Yes, sir.

Q. That is, stubborn, too, when he made up his mind?

A. He was that. He was a very hard man to change.

Q. It is claimed—whether — it cuts any figure in this matter—that he was rather hard of hearing. Could he hear any worse than you do?

A. Well, we used to have a good time. People could hear us half a square off. I used to tell him, "Let's go on the back gallery." He was not quite as deaf as I was, but couldn't hear at all when he got in the house.

Q. You think he could hear better than you can?

A. Yes, sir.

Q. Do you know Mrs. Fabacher?

A. Oh, yes, indeed.

Q. What kind of a wife and housekeeper is she?

A. If the country was full of those kind of good housekeepers, it would be fortunate. She was what we call a thoroughly
523 good housekeeper. I couldn't help but notice it, because everything was nice in order. I used to go in and out there very often.

Q. How were the children brought up by her particularly, as far as you know?

A. Well, they were all pretty well behaved. I don't think she had any reason to complain about any of them.

Q. What was her reputation as a woman—as a housewife? Had she a good reputation for moral character, too? Was anything ever said against her?

A. I know she was a good, clean housekeeper; attended to her business and appeared to be only happy when she was at home in a comfortable home dress. She used to say, "Excuse me, but I am not dressed up for company or anything like that;" but at the time she was always comfortable and her house was neat and tidy.

Q. Do you know that she worked a great deal at home and assisted her husband in his business?

A. She did; and I tell you why I know that: because I went into the kitchen, and she was bossing the stove on several occasions.

Q. Do you know when Mr. Fabacher first started the restaurant on Royal street?

A. I remember when he started it; yes; but I don't know anything about what he was doing at that time. That was after he came down from—what do you call that place up here?

Q. Opelousas.

A. Up in the country—Louisiana—some place. He was up there on a farm, wasn't he, before that?

Q. When he first started the restaurant, didn't Mrs. Fabacher assist in the work?

A. Well, way back as far as a young man, I tell you, I can recollect of Fabacher in the restaurant, and then he went into
524 the country and came back, and I believe he started a restaurant again. During the war he was always in the restaurant business until he put the business over into the boys' name. That I know of now. Now, the last four or five years he had nothing to worry about at all. He lived perfectly easy at home.

Q. During all this time, Mr. Rice, did you ever hear anything against the moral character or reputation of Mrs. Fabacher?

A. Mrs. Fabacher?

Q. Yes.

A. The one that is——

Q. The widow.

A. Not the first word.

Q. Not the first word?

A. No, sir.

Q. She was what you would call a perfect ideal German housewoman and housekeeper?

A. Yes, sir.

Q. And mother to her children?

A. Yes, sir. I never saw her out at all. She was only happy at home. It looked to me like she was comfortable at home and wanted to be home all the time.

By Mr. McCaleb:

Q. How much was Fabacher worth?

A. The old man?

Q. Yes.

A. That I couldn't tell you, sir.

Q. You were pretty thick with him; how much did he tell you he was worth?

A. After he sold out, I don't know what he done with it. He may have invested it. If you ask me how much I was worth three or four years ago, I was worth more than I am now.

Q. I want to know if you know how much he was worth—whether he said how much he was worth.

525 A. That I couldn't tell you. I never asked him anything about his business. He was always comfortable.

Q. Do you know his first wife?

A. I did not.

Q. Did you know the children by his first wife?

A. Well, not to pick them out, because I couldn't have picked them out—the first children—hardly.

Q. Do you know when he was married the last time, and where?

A. That I couldn't tell you.

Q. How many years did he live here before his death? When did you first know him here—how many years? Did he ever tell you how many years he had lived here?

A. Well, the first I ever knew of Fabacher he was quite a young man and couldn't *not* have been more than about sixteen or 17 years of age. He was out on Washington street tending bar, and then I am sure he was not over 16 or 17 years of age.

Q. When was that—when you first knew him?

A. Must have been, Great God—I can't tell; 1847 or 1849; maybe before that.

Q. Was it before you went to California?

A. Oh, yes; oh, yes; I knew him before I went to California. I went out in 1850.

Q. How long did you know him before that?

A. Four or five years. If you will allow me, I will tell you how I came to know him. Father was coroner on the river then and held inquests there, and I know Mr. Fabacher was barkeeper where they repaired to take a drink or I wouldn't have recollected a thing about it, but I have spoken to the old man here in the store about the circumstances.

Q. How long did you stay away from here when you went to California in 1850?

526 A. About three years.

Q. And then you came back?

A. Yes, sir.

Q. Have you been here ever since?

A. Ever since.

Q. Your family all here?

A. I came back here, got married and raised a little family of children.

Q. Do you know when Fabacher was divorced from his first wife?

A. That I couldn't tell; no, sir.

Q. Have never talked with him about those things?

A. Never did mention them; no.

HENRY RICE.

Sworn to and subscribed before me this 12th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

BERNARD MCCLOSKEY, Esq., a witness for the proponent, being first duly and solemnly sworn according to law, deposes and says:

Direct examination by Mr. BUCK:

Q. You are a member of the bar of this city?
A. Yes, sir.
Q. Lived here about how long?
A. Seventeen years.
Q. How long have you lived here?
A. Seventeen years.
Q. And practiced law?
A. Practiced law about thirteen years.
Q. Did you know the late Mr. Fabacher?
A. I met Mr. Fabacher once only.
Q. Did you know of him?
A. Yes, sir.
Q. When and under what circumstances did you meet him?
A. About the winter of 1894. I was examining title to
527 some property bought by Mrs. Bessie Pleasants.
Q. Bought from whom?
A. Mr. Fabacher. The property, I believe, was sold at public auction, and she bought some of the properties, and I went to Mr. Wenk's office when the deed was to be passed.
Q. The notary?
A. Yes, sir; and whilst there Mr. Fabacher had spoken to me about a lawsuit that I had had for Peter Fabacher—a damage suit against him—and asked me how I was getting along with it, and in the conversation I asked him why was he selling these properties if they were good investments—that they were good investments—and he told me that he was going to live in Waukesha, and then talked to me about Waukesha—I had been there six or seven times—and we had a general conversation about Waukesha. Since then I was always under the impression that Mr. Fabacher lived in Waukesha.
Q. Tell us then and there what he said to you about going to Waukesha—whether his intentions were to live there permanently or the usual summer visit.
A. I can't recall all the details of his conversation. It was a general conversation. He was talking about Waukesha and what *what* kind of a place it was and why he was selling these properties, and he informed me that he was going to live in Waukesha. I had told him that I was very familiar with Waukesha; been there six or seven times; spent three or four weeks' time there. That, I believe, was in the winter of 1894. I think it was November or December, 1894, when these properties were sold.

By Mr. DART:

Q. Are you a member of the American Ass'n?
A. Yes, sir.
Q. And what corporations do you represent in New Orleans—what public corporations?

A. Well, I am attorney for the Levee Board, the Hibernia national bank, the Hibernia Insurance Co., Combined Cotton Presses
528 in New Orleans, Dock Commission, and five or six other corporations.

Q. You are in full general practice here?

A. Yes, sir.

No cross-examination.

BERNARD McCLOSKEY.

Sworn to and subscribed before me this 12th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

Gen. EUGENE MAY, a witness for the proponent, being first duly and solemnly sworn according to law, deposes and says:

Direct examination by Mr. BUCK:

Q. You live in the city of New Orleans?

A. Yes, sir.

Q. You were born here, I believe, at any rate?

A. I lived here 51 years, barring the time of the war.

Q. During that time you heard of and met the late Mr. Joseph Fabacher in New Orleans?

A. I have known him about six years.

Q. You live where? Is your private residence in that part of the city where he used to reside?

A. I have resided since the war at the corner of Perrier and Peniston street.

Q. That is not far from Aline and Prytania?

A. No, sir; short distance.

Q. Did you ever see Mr. Fabacher in Waukesha, Wisconsin?

A. I have never seen him there; no, sir.

Q. Have you had any conversation with him about living there or going there to live?

A. Oh, he told me that on account of his health his doctor informed him that it would be necessary for him to quit here, and that he intended to locate in Waukesha. He told me this in the restaurant. For a long period of time I was in the habit of
529 taking my dinner there every day, or my lunch, and we were quite friendly, and I used to call him the poor man and I was the rich man, and we always consulted each other. We always had our joke, and I seldom went there without having a little joke with him.

Q. Your business is at the corner of Royal and Canal?

A. No, sir; Chartres and Canal.

Q. What is your business?

A. Druggist.

Q. You have an extensive establishment in town?

A. Somewhat.

Q. Considered one of the more extensive drug stores in the city of New Orleans, is it?

A. I employ thirty-six people; yes, sir.

Q. And from there to the restaurant it is a short walk?

A. Yes, sir.

Q. That is where you were in the habit of meeting Mr. Fabacher?

A. Yes, sir; I go there yet.

Q. During the time that he was selling property did you see him—his real estate?

A. Well, he informed me that he intended to sell all his property, and in passing in the Prytania car I saw the signs upon two properties near the Touro infirmary; one of which was his residence and the other was a double cottage on a triangle, just below.

Q. Did you have one conversation with him in which he referred to quitting here or going to Waukesha?

A. No, sir.

Q. Or was that an *off*-repeated subject of conversation?

A. On several occasions.

Q. State as nearly as you can the actual substance of those conversations and the impressions that were left on your mind as to his real intentions.

530 A. Well, he told me that his physician had decided that it was necessary for him to leave here, and that he would locate in Waukesha—very much pleased with it.

Q. He had gone to Waukesha from time to time and come back again?

A. Oh, yes; he had been home.

Q. Did he ever tell you anything about how he had established himself there, and how he liked it?

A. He told me he liked the place very much. He said nothing about having established himself, because at that time he was contemplating building.

Q. When he spoke of contemplating building, did he say that he was going to build there; going to stop there?

A. Told me he was going to live there altogether.

Q. You did not visit him at his house, and don't know anything about his family?

A. No, sir.

Cross-examination by Mr. McCaleb:

Q. After he told you he was going to live there altogether, didn't you see him back here?

A. Yes, sir.

Q. Frequently?

A. No, sir.

Q. Didn't you see him here during the winter of 1895 and 1896?

A. I rather think I did.

Q. Didn't you see him here during the winter of 1896 and 1897—up to the time of his death, on the third of March, 1897?

A. I think I did.

Q. Didn't you see him during the winter of 1894 and 1895?

A. Well, that I am inclined to think I did.

Q. Then, although he told you he was going away to Waukesha to live there altogether, you afterwards saw him back here very frequent during the winter months, in consecutive years?

531 A. I think I did; yes, sir.

Q. When did you have this conversation or these conversations with him about his proposed going away to Waukesha to live?

A. Well, that was about—I think that was something between two and three years ago, I think.

Q. Weren't these properties sold in 1895 that you referred to there on Prytania near Aline?

A. I don't remember, Judge, when they were sold.

Q. When did he move on Calhoun street?

A. That I don't know.

Q. You don't know how long he lived there prior to his death?

A. No, sir.

Q. Who is living in the property formerly occupied by him as a residence, on the corner of Prytania and Aline streets?

A. Who is?

Q. Yes.

A. I don't know.

Q. Don't you know that that property belongs to a Mr. Broderick, his son-in-law?

A. No, sir; I don't know Mr. Broderick. I do remember that his daughter married a Mr. Broderick, but I don't know——

Q. Col. May, weren't you at his funeral?

A. Yes, sir.

Q. How came you to go there?

A. Well, I have been extremely friendly with his sons, especially with Mr. Lawrence. I saw by the paper that he had died, and I went to the funeral.

Q. You saw the funeral notice in the newspaper?

A. Yes, sir.

Q. Do you remember in what paper you saw it?

A. I can't say that I do remember. It must have been the

532 Times-Democrat or the Picayune.

Q. The Times-Democrat or the Picayune?

A. Yes, sir; one or the other.

Q. Perhaps both?

A. Yes, sir.

Q. You read both generally every morning?

A. Read them all.

Q. And it was through reading this funeral notice that you went there to attend the funeral?

A. Yes, sir.

Q. He was buried from the house he was living in on Calhoun street?

A. He was buried from the house on Calhoun street; yes, sir. I have never been there before.

Q. It was a large funeral?

A. Quite.

Q. His body was taken from there to the Jesuits' church, on Baronne street?

A. Yes, sir.

Q. And was buried in St. Joseph's cemetery, No. 2, on Washington street?

A. I was a pall-bearer. I think that that was the cemetery.

Q. And on the family tomb, in which his body was interred, was inscribed "Family tomb of Joseph Fabacher"?

A. I don't remember; I didn't pay attention. As a rule, I dislike to go to funerals. I do it more as a matter of duty. I dislike to do it, and I don't know that I looked.

Q. A man who has seen as much as you have of that kind of business during the war don't like to go to funerals; isn't that true?

533 A. That's a fact.

Q. We old soldiers don't like to go to funerals, if we can help it.

A. I don't like to go.

EUGENE MAY.

Sworn to and subscribed before me this 18th day of June, 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

OTTO THOMAN, Esq., a witness for the proponent, being first duly and solemnly sworn according to law, deposes and says:

Direct examination by Mr. BUCK:

Q. You are what we usually call an old resident of this city?

A. Well, I have lived here all my life.

Q. About how long is that?

A. Fifty-four—fifty-four and a half years.

Q. During how many years of that time have you known the late Joseph Fabacher?

A. Since 1853.

Q. Do you know that he established a restaurant at the corner of Royal and Custom-house streets?

A. Yes, sir.

Q. When did he cease his connection with that restaurant?

A. I don't remember what year.

Q. Well, about?

A. I remember he took the restaurant on Gravier street.

Q. How many years ago was that?

A. I can't tell you exactly; ten or fifteen years ago, I suppose.

Q. In any words, was he in business during the last few years that you have known him?

A. No, sir.

Q. He had retired?

A. Yes, sir.

534 Q. Where was he living?

A. He was living at the corner of Prytania and Aline, the same neighborhood as I live.

Q. You lived in that part of the city?

A. Yes, sir; three or four squares away. I live corner of Camp and Foucher, and only a few squares away.

Q. Do you know when he sold his property?

A. I remember the time that he sold the property at the corner of Foucher and Prytania—those two-story double houses there.

Q. Well, then, what year?

A. I can't remember the year, but I was surprised that he sold it, and I asked him, says I, "How is it you are seeling your property?" "Well," he says, "I want to sell my property and get away from here; I want to get out of New Orleans, sell my property, and I am going to Waukesha to live." That's what he told me, because I was surprised that he had sold the property.

Q. Do you know what he did with his furniture that he had in his residence on Aline and Prytania streets?

A. No; I don't remember. No; I don't know a thing about that.

Q. You know that that is sold also, do you not? He moved away from there some time before his death?

A. Oh, I know that he moved away, but I don't know anything about the furniture.

Q. You know, as a matter of fact, that he did go to Waukesha?

A. Oh, yes, sir.

Q. And since the time you have known of the sale of the property he has not been living at that place?

A. Yes; that I know.

Q. Do you know whether or not he had any home in New Orleans at all since that time?

A. Well, I know that when he came here he lived up on Calhoun street, and he would come here—he lived there during the
535 winter months, but he told me that he just simply had quit here on account of his health. When he lived here he was sick and he couldn't live here any longer, and when he was in Waukesha he was a well man, and he made up his mind that, in order to live, he had to go there and live there.

Q. Go and stay there.

A. Yes, sir; he told me that not once, but he told me that a dozen times.

Q. Did you have any conversation with him on that subject during his last visit, prior to his death?

A. Yes, sir.

Q. What did he say?

A. He told me all the time that the only reason he came here during the winter was because his wife wanted to come here and see the children, and that he, of course, came here within two or three months; but I remember positively he was late coming here in the fall, and he was very early in going away from here during the spring.

Q. And this time he told you that he came down because his wife wanted to come down and see the children?

A. Yes, sir; that's what he said. I know all the children, and I

know the youngest one, Jacob, who is at Springhill college now, is a good friend of my little boy's.

Q. You visited his house?

A. Yes, sir; often.

Q. You know his wife?

A. Yes, sir.

Q. What kind of a woman is she?

A. Very good housekeeper—splendid housekeeper; always appeared to me to be a first-class woman in every respect; good mother.

Q. You know all the children, then?

A. I do know all the children.

536 Q. You know a number of them grown up are in good business standing here in this community?

A. Very good; yes, sir; know all of them.

Q. Able to take care of themselves and make a living for themselves?

A. Yes, sir; they have always done so.

Q. They were all brought up in the household?

A. Yes, sir.

Q. By the old man and his wife?

A. Yes, sir.

Q. Yourself—you have been prominent in business circles here in this city?

A. I don't know that I am very prominent. I have been at work for forty years.

Q. You were some time ago city com-troller, were you not?

A. Yes, sir.

Q. You are now president of the Firemen's Insurance Co.?

A. Yes, sir.

Q. Carried on private business besides?

A. Yes, sir.

Q. You are also president of the Louisiana levee board?

A. Orleans levee board.

Q. Orleans levee board?

A. Yes, sir.

Q. Appointed by the governor of this State?

A. Yes, sir.

Q. Do you know or did you consider, as a friend and acquaintance of Mr. Fabacher, yourself, as well as among other people that knew him, hearing of his going way, did you consider that he had any residence in this city at all——

Objected to by counsel for proponent.

A. No.

537 Q. —after he had made these declarations to go to Waukesha, followed by the fact that he did go?

Objected to as leading and suggestive and as merely a matter of opinion.

Q. Ans-er the question.

A. Well, I considered that his home was in Waukesha.
Q. You looked upon him as having gone to Waukesha?
A. Yes, sir; that's what I considered from what I knew of the facts. I thought that he had made that his home.

Cross-examined by Mr. McCaleb:

Q. Did you visit him after he moved on Calhoun street?
A. No.
Q. You never were in the house there?
A. No, sir.
Q. At what schools did your son go with Jacob?
A. What schools?
Q. Yes.
A. They went to Father Lambert's school and the Jesuits'.
Q. How long ago was that?
A. No; the Jesuits' school.
Q. The Jesuits' school in this city?
A. Yes, sir; on Common and Barronne street.
Q. Was that during the session of 1895–1896—last year?
A. Well, it may have been 1895. I don't think it was 1896.
Q. Isn't it general that the boys go from the Jesuits' here, after they are graduated, to Springhill, Alabama?
A. Well, Jakey is there at Springhill now. My boy is at the Jesuits'.
Q. And Jakey was with your boy in 1895, and you don't remember whether in 1896 he was there or not?
A. Well, Jakey left the Jesuits' school here and went over to the Springhill college and my boy stayed here.
538 Q. Wasn't that in the fall of 1895? When I say 1895 and 1896 I mean the scholastic year 1895 and 1896.
A. Well, they made the change during the fall.
Q. He was at the Jesuits' here during the scholastic year 1895–1896?
A. Well, no—whom do you mean?
Q. I mean Jakey Fabacher, this young boy, went to the Jesuits' school during what we call the scholastic year—that is to say, the beginning of October until the latter part of June—at the Jesuits' school near the Church of the Immaculate Conception on Baronne street.
A. Well, Judge, I tell you that I remember this, that my boy told me that at that time the reason that the change was made from the Jesuits' school to the Springhill college was that they thought that Jakey would do a little better over there; that he would learn better over there than here, and they thought it would be better for him to go there because he didn't learn very well here, and he would do better by going to that school.
Q. Wasn't that, though, the fall of 1896 that he went there?
A. I don't remember. I couldn't swear positively. I don't think it was in the fall of 1896.
Q. Last fall I mean.

A. Maybe it was. I can't swear positively whether it was or not.

Q. Who is living in the family residence of Joseph Fabacher at the corner of Aline and Prytania streets?

A. Now?

Q. Yes.

A. Well, Louis Fabacher did. I don't know who lives there now. I couldn't tell you.

Q. Who was Mr. Joseph Fabacher's agent and representative in this city?

A. I don't know.

539 Q. About when did he tell you that—you say a thousand times—that he was going to live in Waukesha?

A. Oh, during several years, all the time. When he first sold the property corner Prytania and Foucher street I was surprised when he sold the property, and he told me he was going to sell all that property; that he was sick, and I noticed myself whenever he came here he got sick and went down in health. I noticed that myself, and as soon as he would go to Waukesha and come back he was a new man, and it seemed to me it was just what he needed and what he wanted, and he told me that he had made up his mind to go there to live; that he was going to sell everything he had here and was going there to make it his home. He told me that, not once, but told me that half a dozen times.

Q. When did he tell you that?

A. Different times—that is, when he came back from Waukesha or before he would leave and go away again. For instance, the last time that he left I found it strange that he left so early in the season, that I thought he was leaving entirely too soon. I says, "What are you leaving so early for?" and he says, "Well, when I am here I am sick, and I feel ill just as soon as I come here, and I want to leave here just as soon as I can."

Q. Do you know he was in bad health during the latter years of his *health?*

A. It seems that maybe he was.

Q. And he was there for his health?

A. Yes; he told me, though—he told me that he got along better than he did here, and he intended to go there to live. That's what he told me. I remember that much. He bought his furniture and furnished the house that he had built in Waukesha, and he

540 asked me a good man here to buy his furniture from, and I went with him to Mr. Joworek, the man who was killed corner Canal and Dryades street by the electric wire—you remember that circumstance. I took him around to Mr. Jaworek myself and introduced him to Mr. Jaworek because Mr. Jaworek represented the largest furniture factories in the United States, and he could furnish him his furniture from any point in the West right there.

Q. When was that, Mr. Thoman?

A. That was several years ago; three or four years ago, when he

first—you may say when he was building the house and when he had completed the house, whatever time that was.

Q. Did you know his first wife?

A. No, sir; can't remember anything about it. I was a boy then; I was only ten years old; but I remember in 1853, during the yellow-fever epidemic of 1853, I remember that he was a very sick man; had the yellow fever in 1853, and my father-in-law, my wife's father, was his best friend and took care of him, took charge of him and nursed him when he had the yellow fever, in 1853. That I remember distinctly. He kept a coffee-house, corner Sixth and Tchoupitoulas, called "The Schwartze Bear," "The Black Bear"—corner of Sixth and Tchoupitoulas.

Q. Do you know whether he was married to his last wife and when?

A. No; I don't know; no.

Q. You attended the funeral?

A. Yes, sir.

Q. You attended the funeral?

A. Yes, sir.

Q. From where was he buried?

A. From Calhoun street.

Q. Large funeral?

A. Yes, sir.

541 Q. He had a large acquaintance here?

A. Yes, sir.

Q. His family all lived here?

A. Yes, sir.

Q. Children and grandchildren?

A. Yes, sir.

Q. Do you know where his daughter went to school, the youngest one?

A. No.

Q. How came you to go to his funeral?

A. Oh, well, he was an old acquaintance.

Q. Didn't *not* you see it advertised in the newspapers?

A. Yes, sir; but I knew it anyhow without that.

Q. You knew of his death regardless of the advertisement?

A. Yes, sir; regardless of the advertisement.

Q. You read it through in the "Times-Democrat" and "Picayune"?

A. Oh, I read it over; yes, certainly; but I knew of his death anyhow and I would have been at his funeral even if it had not been published. I have known him for many, many years.

By Mr. BUCK:

Q. If you knew him so very well, then, I will ask you a question as to his disposition. What kind of a man was he in regard to firmness and positiveness?

A. He was a man of a very strong will—strong mind—and he done what he promised to do or made up his mind to do.

Q. Not only a strong will, but stubborn about it?

A. Yes, sir.

Q. Could anybody else influence him to do anything that was against his inclination and judgment?

A. No, no; I couldn't. I tried that in playing euchre with him. I tried it several times. I know I never could get him to do anything he didn't want to, and I was an old friend of his.

542 Q. There has been something said about taking a drink. Was he a strong, hearty man?

A. I never saw him tight in my life; never saw him intoxicated; never saw him that he was not able to do business and talk sense.

Q. In other words, you never saw him that he was not at his best, so far as good judgment and good sense are concerned?

A. No, sir; never did.

Q. Drink did not influence him in any way?

A. No, sir; I never saw him intoxicated.

Q. You knew his wife?

A. Yes, sir; she is a regular German; good housekeeper; seemed to be a good mother; I mean everything seemed to be all right.

Q. It is claimed that he was very hard of hearing. What do you know about that?

A. I asked him several times to take a drink; he always heard it. I didn't talk in a very loud tone of voice, but he always heard me when I invited him.

Q. He was somewhat hard of hearing?

A. I didn't know that.

Q. You never noticed it?

A. No.

Q. You never heard him complain about not being able to see?

A. No.

Q. Not being able to read the papers?

A. No.

By Mr. McCaleb:

Q. He was very devoted to his family, wasn't he?

A. I thought so. I know he thought the world of Lawrence and Peter and the balance of the boys. He told me he had a lot of good boys.

543 Q. He was very affectionate; a good father?

A. I think so; I don't know anything otherwise. That is the way it seemed to me.

OTTO THOMAN.

Sworn to and subscribed before me this 12th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

FRANK PACE, Esq., a witness for the proponent, being first duly and solemnly sworn according to law, deposes and says:

Direct examination by Mr. BUCK:

Q. What business are you in?
A. Fruit business.
Q. You are extensively interested in that business?
A. Yes, sir.
Q. Have the most prominent fruit stand in the city, corner of Canal and St. Charles?
A. Yes, sir; I am manager of the most prominent fruit store in the city.
Q. How long have you been living here?
A. Born and raised here.
Q. You knew the late Joseph Fabacher?
A. Yes, sir.
Q. Knew him well?
A. Yes, sir; I did.
Q. What is your age, Mr. Pace?
A. I am 53 years old.
Q. Been here how many years?
A. Fifty years.
Q. Do you know that he retired from business in the last few years of his life?
A. Yes, sir.
Q. You know about his restaurant on Canal and Custom-house streets?
544 A. Yes, sir.
Q. Now carried on by his sons?
A. Yes, sir.
Q. Did you have any conversation with him or any conversation in which the matter of home or residence was mentioned—where he was spending his time?
A. Yes, sir; I think it was about four years ago, between four and five years ago, he said that he was going to leave here and make his home in Waukesha on account of his health. I think that was about four or five years ago, if I am not mistaken.
Q. Did you have any conversation with him more recently on the same subject?
A. Yes, sir; I used to see the old gentleman almost every day.
Q. Well, recall some of the most recent and some of the most prominent conversations in which anything was positively said about that.
A. Well, his conversations were always about his home up there, and he invited me several times to come up there; told me that it would do me some good. I suffered from dyspepsia all the time, and in fact he was all the time after me to come up there and stay with him for a while.
Q. Did he tell you anything about his house and establishment?
A. Yes, sir.
Q. Up there?

A. Yes, sir.

Q. Did you see him here in the last winter before his sickness and death?

A. Yes, sir.

Q. Have any conversation with him then on that subject or did he say anything to you about it, about the subject of living in Waukesha?

A. No; I would tease him about coming down here, and
545 he says, "Well, I had to come here on account of mama wants to see the children."

Q. You teased him about coming back because he was bragging so much about Waukesha?

A. Yes, sir.

Q. What reason did he give for coming down?

A. He called his wife mama—he always did call her that—and said that he came down here to see the children.

Q. Was there anything said about going back?

A. Yes, sir.

Q. With what intentions?

A. To stay there.

Q. To stay there?

A. Yes, sir; to stay there. He wanted me to get him some grapevines and fruit trees.

Q. For his place?

A. Yes, sir.

Cross-examination by Mr. McCaleb:

Q. When was it that you had that conversation with him about getting the grapevines for his place?

A. That was before his illness, before he got sick this last time.

Q. About how long ago?

A. That has been about three or four months ago; it is a little before he died, about a month before.

Q. What did he say about going back then?

A. He said he was going back there very soon, expected to come back in a month, and wanted me to get him some grapevines, and then mentioned the variety of grapes that he wanted.

Q. Didn't you see him here, and didn't he spend every winter here after he went in 1894?

A. Well, I couldn't exactly tell how many winters he spent here, but I saw him here off and on.

546 Q. Don't you know he was here in 1895 and 1896, from October, 1895, to May, 1896?

A. I couldn't say that positively. I used to see him every day.

Q. Don't you know he was here from about the 20th of November, 1896, up to the time of his death, on the 3rd of March, 1897?

A. Yes, sir; I knew he came here——

Q. November, 1896, I mean to say.

A. I don't know exactly what month he came here, but he was here during the winter.

Q. Did you ever visit his house?
A. No, sir.

By Mr. BUCK:

Q. Mr. Fabacher was a very well known man in the city?
A. Yes, sir.
Q. Almost everybody in the business circles knew him?
A. Yes, sir.
Q. Personally or by reputation, at least?
A. Yes, sir.
Q. From what you heard from him and others, if anything, as to his——

Counsel for contestant objects to anything which the witness may have heard from others.

Q. Both your own impressions and what you heard, if anything——

Counsel for contestant objects to testimony as to impressions.

Q. What was your belief as to his home and residence prior to his death, the first few years prior to his death?
A. What do you mean?
Q. Was he considered a resident of the city of New Orleans by those who knew him?
547 A. No, sir.
Q. Where did he live?
A. Waukesha.

By Mr. CALEB:

Q. Did you attend the funeral?
A. Yes, sir.
Q. How came you to know that he was dead and was going to have a funeral?
A. I knew he was dead from seeing the notice in the paper.
Q. In the newspaper?
A. Yes, sir.
Q. Didn't that newspaper announce that he had been fifty-three years a resident of this city, and that he was going to be buried from his late residence, on Calhoun street?
A. Well, I couldn't tell you.
Q. Is not that the fact?
A. I couldn't tell you exactly what the newspaper said.
Q. Well, wasn't that stated in the funeral notice? Which did you see it in—the "Times-Democrat" or the Picayune?
A. I don't recollect. I saw it in one of the papers.
Q. One or the other of them?
A. Yes, sir.
Q. Those are the largest daily papers here—morning dailies?
A. Yes, sir.
Q. But it was from the publications in the papers on the morning of his death that induced you to attend the funeral?

A. No; it wasn't exactly the publications, because I knew he was dead on account of the restaurant being closed. I usually go there every day for lunch.

Q. But you saw those funeral notices in the newspapers?

A. I saw it in the paper.

Q. These funeral notices eminated from the family?

A. I suppose they did; I don't know.

548 FRANK PACE.

Sworn to and subscribed before me this 30th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

JOSEPH SCHUTTEN, Esq., being first duly and solemnly sworn on behalf of the proponent, deposes and says:

Direct examination by Mr. BUCK:

Q. You reside here?

A. Yes, sir.

Q. How long have you been a resident of this city?

A. Born and raised here.

Q. Born and raised here?

A. Yes, sir.

Q. What is your age?

A. I am going on 42.

Q. What business are you in here?

A. Wholesale grocery business—grocery business.

Q. Since when?

A. For myself since 1890.

Q. You knew Mr. Joseph Fabacher?

A. Yes, sir.

Q. Knew him well?

A. Yes, sir.

Q. For how many years?

A. Well, I knew the Fabacher family, I think, since 1867, when they went off in the country. His eldest son was a schoolmate of mine—that is, Joe Fabacher.

Q. Do you know of Mr. Fabacher's recent removals to Waukesha, Wis., within the last five or six years?

A. Yes, sir.

549 Q. Have you had any conversation with him regarding them and his intentions in doing so?

A. Yes, sir; several times.

Q. When was the last time you met him and spoke to him about that?

A. The last time I spoke to him was, I think, the day that he took sick—at 12 o'clock. I took lunch down there and went up home in the evening, about 4 or 5 o'clock, and I don't think he came down any more since that time.

Q. You took lunch with him on that day?

A. No. I was in the restaurant taking lunch, and he came up and spoke to me.

Q. What was the purpose of that conversation, so far as it regarded his home and intentions?

A. He asked me in regard to business and in regard to rice, and he told me at the time he was ready to go to Waukesha.

Q. At that time?

A. Yes, sir.

Q. For what purpose?

A. Well, for his health and because he likes it there as a home, and invited me if I ever came up there that when I should come up there and I should see him and he would give me all the milk and all the fruit and all the good water to drink that I wanted.

Q. He spoke of Waukesha as his home?

A. Yes, sir.

Q. I understand from that that he moved there or was going to move there, or what?

A. Well, I think he had moved there already?

Q. He had moved there already?

A. Yes, sir.

Q. That is the impression that he made upon your mind?

550 A. Yes, sir. The only thing that brought him down here was to see his children, and his wife wanted to come down more on account of the family.

Q. Do you know whether or not he was at that moment or just before he was taken sick already making preperations to go home?

A. Yes, sir; he was making preperations, because he made preparations in regard to rice. He wanted to take some rice along.

Q. What time of the year was this?

A. It was the day he took sick.

Q. And he died early in March?

A. Yes, sir; I think it was.

Q. This conversation took place some time in the month of February?

A. Yes, sir; the same day that he took sick, because he remained home next day. When I went down to lunch they told me the old man is gone home, and I inquired how he was.

Q. Have you had other conversations with him at other and previous times about the same subject?

A. Well, other conversations. I met him in there, and he would always address me and shake hands and had a general talk all around.

Q. He was a man very well known here in the city?

A. Yes, sir; very well known.

Q. Personally as well as by reputation?

A. Yes, sir.

Q. In fact, almost everybody knew him?

A. Yes, sir; everybody knew Fabacher.

Q. Or knew of him?

A. Yes, sir.

Q. Do you know in general what the opinion of his friends was as to his having moved away from here or changed his residence?

551 Same objection by contestant.

A. Well, on account of his health.

Q. It was generally understood?

A. Yes, sir; because he liked it up there better than he did here, because it was too hot for him down here.

Q. Did you consider at this time what you had heard from him, his actions generally, that he was a resident of the city of New Orleans?

Same objection by contestant's counsel.

A. Well, no; I don't believe he was a citizen, because he considered his home at Waukesha.

Cross-examination by Mr. McCaleb:

Q. You saw the funeral notice?

A. I think I seen his funeral notice in the paper.

Q. "Times-Democrat" or "Picayune"?

A. Yes, sir.

Q. You were very much surprised when you saw that he had been a resident of this city for fifty-three years?

A. Well, I knew he had lived here all the time up until about five years ago.

Q. And that he was to be buried from his late residence on Calhoun street—his funeral was to take place from his late residence on Calhoun street?

A. I don't believe that was his late residence at all, because he told me that he——

Q. Didn't the newspapers say so?

A. Well, I couldn't say exactly. I wanted to build a house and I wanted to borrow a plan from him. He referred me to Lawrence Fabacher.

Q. I am not asking you about that. I am asking you if this newspaper announcement that you saw of his funeral did not state that his funeral will take place from his late residence on Calhoun street.

552 A. Well, I don't know; I couldn't say that.

Q. Didn't you go there?

A. I went to the funeral; yes, sir.

Q. On the notice that you saw in the newspaper?

A. No, sir; I went there because I knew him well. I was a friend of his. I didn't go on account of the newspapers.

Q. Who held his power of attorney here?

A. Well, I don't know. I think he held his own power of attorney here.

Q. Who acted for him when he was gone?

A. Well, I think it was either Lawrence or Albert really attended to his business while he was away.

Q. How old is the oldest son, Joseph, that you know?

A. His oldest son, Joseph, I think he is about 38 or 40, somewhere around there. I couldn't say exactly.

Q. Do you know Mr. Fabacher's first wife?
A. No, sir.
Q. Do you know any of his children by his first wife?
A. Knew one of them.
Q. Who was that?
A. She was a Mrs. Troy; I think Mrs. Thorman.
Q. Do you know where he was married to his last wife and where?
A. What's that?
Q. Do you know when he was married to his last wife and where?
A. No, sir.
Q. He was very much attached to his family?
A. Yes, sir; he was greatly attached to his children and wife.
Q. Mr. Lawrence Fabacher was his favorite son?
A. I think while he was in business; but perhaps a little later it was Mr. Albert, I think. I couldn't say. That is my belief, as far as my opin-on goes.

553 By Mr. BUCK:

Q. You say he was very much attached to his family. For all that, he was a man who would not allow any of his family to influence him?
A. No, sir; nothing at all. I went there on business several times and he wouldn't do anything at all, except in his own way of doing things.
Q. Although attached to his family, he was a very strict father?
A. Yes, sir.
Q. Very strict man in his family affairs?
A. Yes, sir.
Q. Acting on his will according to his own judgment?
A. Yes, sir; following his own way about it.

By Mr. MCCALEB:

Q. About how old a man is Mr. Lawrence Fabacher?
A. I think Lawrence is about 36 years old.
Q. And Albert?
A. Albert, I guess, is 39. I think Joe is about 41; something like that.
Q. And Louis?
A. Well, Louis, I think, must be about 30; I couldn't say exactly.
Q. And Tony or Antonio?
A. Well, Antony is—I think first comes Joe, then Lawrence, then Albert, then Tony, then Peter, then Louis—in fact, I don't know exactly. I couldn't say exactly how the family runs.
Q. Do you know the younger children?
A. Yes, sir.
Q. Where did his youngest son go to school in the scholastic session of 1895–1896?
A. I think he had some of his children up in Waukesha, going to school in Waukesha.
Q. Going to school up in Waukesha?

A. I believe so.

554 Q. You think so; why do you think that?

A. Because I think we had a conversation one time, in the evening there, and I think he told me that they were up there. His wife was up there, and I was under the impression when he talked really at the time that he had one or two of his children there.

By Mr. BUCK:

Q. There was something said about Mr. Fabacher's eyesight. Was there anything serious the matter or anything the matter at all with his eyes, that you know?

A. No, sir; not at all.

Q. You never heard him complain of his eyes?

A. No, sir.

Q. He was somewhat hard of hearing, wasn't he?

A. Not that I know of.

Q. Anyhow, not specially so as to interfere with his business or conversation?

A. No, sir; not at all.

JOSEPH SCHUTTEN.

Sworn to and subscribed before me this 19th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

At this point the further hearing of this case was adjourned until Monday, June 14th, 1897, at 11 o'clock a. m., at the same place.

In witness whereof I have hereunto set my hand and affixed my official seal.

ARTHUR McGUIRK, *Not. Pub.*

555 STATE OF WISCONSIN:

In the County Court of Waukesha County.

In the Matter of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Depositions taken on the part of proponent of several witnesses at New Orleans, La., this 14th day of June, A. D. 1897, at 11 o'clock a. m., at the office of Messrs. Buck, Walshe & Buck, 3rd floor, Masonic Temple, New Orleans, La.

It is hereby stipulated and agreed by and between Messrs. Ryan & Merton, attorneys of record for and on behalf of the proponent of the last will and testament of said Joseph Fabacher, deceased, and by Messrs. Carney, Clausen & Walshe, attorneys of record for and on behalf of Antoinetta Thorman, contestant in the above-entitled matter, that the depositions of the several and different witnesses hereinafter named shall be taken for and on behalf of said proponent by giving at least twenty-four hours' notice of the taking of said depositions, E. Howard McCaleb, Esq., counsel representing the said

contestant, on behalf of Carney, Clausen & Walshe, of Waukesha, Wisconsin, the attorneys of record of said contestant, and in the presence of Messrs. Chas. F. Buck and Henry P. Dart, representing the said proponent, and that all further notice and formality required by the statutes of the State of Wisconsin as to the tak-
556 ing of depositions are hereby waived, and the same stipulation is entered into between the parties regarding any testimony which may be taken for and on behalf of said contestant, Mrs. Antoinetta Thorman, hereafter, in accordance with the written stipulation heretofore entered into between the said parties, and either of said parties may use the depositions taken herein in accordance with this stipulation or any other depositions taken at the city of New Orleans by either party on or before the 19th day of June, 1897, the same privileges being extended to the counsel representing the contestant.

It is further stipulated that said depositions on the part of the proponent may be taken before Arthur McGuirk, notary public, and the same may be used upon the hearing of said matter in the county court of Waukesha county or the circuit court of Waukesha county, as said matter should reach, or in the supreme court of the State of Wisconsin, the same as if the regular notice and formalities had been complied with, as required by the statutes, this stipulation being entered into for the mutual convenience of counsel.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

557 Met this 14th day of June, 1897.
Present: Counsel as before.

Whereupon THOMAS NICHOLSON, Esq., a witness for the proponent, being first duly and solemnly sworn according to law, his oath on the Holy Evangelists, as in the case of the other witnesses, being hereby waived by consent of counsel, deposes and says:

Direct examination by Mr. BUCK:

Q. Where do you reside?
A. In New Orleans.
Q. How long have you lived in New Orleans?
A. Off and on, seven years.
Q. What is your business?
A. Contractor.
Q. What is more particularly your line? In what branch of business are you contracting—house-builder?
A. Erecting heavy buildings—large buildings.
Q. Will you name some large contracts which you executed in this city?
A. Illinois Central depot, Tulane College buildings——
Q. Tulane university now?
A. Yes, sir. The Hennen building, the St. Charles building.

By Mr. DART:

Q. St. Charles hotel?
A. Yes, sir; St. Charles hotel.

By Mr. BUCK:

Q. You are the chief contractor in those structures?

A. In most of them.

Q. Did you know the late Mr. Joseph Fabacher?

558 A. I did.

Q. When did you see him the last time before his death?

A. Well, about the last time he was well enough to be in the restaurant; I couldn't tell you when.

Q. When was it?

A. I couldn't tell you the time or the date; didn't take any note of it.

Q. You took no particular note of the time?

A. No.

Q. But you saw him a few days before the time he was taken sick?

A. Yes, sir.

Q. In the last winter?

A. Last winter.

Q. What conversation, if any, occurred in regard to his movements and whereabouts—his residence?

A. Several times we have had conversations regarding his northern residence.

Q. What were those conversations?

By Mr. MCCALEB: State when and where and who were present.

A. The time more especially was in 1895 and 1896; in the winter season of those two times.

By Mr. BUCK:

Q. Where?

A. In Fabacher's restaurant, on Custom-house street.

Q. Who, if anybody, besides yourself was present?

A. They were present but not within hearing.

Q. Now, what was the purport of those conversations in regard to his residence or movements?

A. It was regarding how he liked Waukesha as a place of residence, and in our conversation he stated to me that he intended to stay winter as well as summer there.

Q. Do you know where he lived in this city before 1895, or up to the spring of 1895?

559 A. I am not acquainted with his residence in this city. I met him at the restaurant, eating there.

Q. Do you know whether or not he about that time disposed of his property in this city?

A. I don't know anything about it.

Q. How came he to speak of Waukesha as wishing to live there summer and winter?

A. We often canvassed the respective merits of the North and South as places of residence.

Q. And he expressed his preference for Waukesha?

A. He did.

Q. What, if anything, did he say about moving permanently to Waukesha to live there as his home?

A. He said that he intended to stay there winters as well as summer.

Q. Did he tell you anything why he had been down here during the winters to which you refer—I mean in the winter of 1895 and 1896?

A. No; he didn't state to me the reason why he was down here. I asked him why he did not stay the winter up there as he said he would do. He replied that he saw the snow there, anyway, and that he had sleigh-riding up there, and so on; enjoyed himself in the winter until he came down. It was late that year when he came down.

Q. Did he say anything about his wife and children?

A. No.

Q. At that time?

A. No, sir.

Q. You have stated all you know from him in regard to his residence in Waukesha?

A. Yes, sir; that was all, except he was extolling the health-giving qualities of the place and what a great advantage it
560 was for a man to come to his time of life to locate in such a place, as it would prolong his life.

By Mr. DART:

Q. You were originally from the North, weren't you, Mr. Nicholoson?

A. Yes, sir.

Q. How long ago?

A. I have been here about seven years, off and on—about that time. Part of the time I am North and part South.

Q. Where did you come from first?

A. Chicago.

Q. You still retain some business relations there?

A. Part of my business is there. One son is there and the other son is out here.

Cross-examination by Mr. MCCALEB:

Q. Who spoke to you as to giving your testimony in this case?

A. Sir?

Q. Who spoke to you about giving your testimony in this case?

A. Mr. Fabacher.

Q. Mr. Lawrence Fabacher?

A. Mr. Lawrence Fabacher.

Q. When did he tell you that he, Joseph Fabacher, intended to stay in Waukesha, winter as well as summer?

A. It was in the spring of 1895.

Q. In the spring of 1895. Now, do you know how long he remained here when he was here during the winter of 1894 and 1895?

A. You mean, then, the spring of 1895?

Q. Yes; he was here during the winter of 1894 and 1895 and in the spring of 1895?

A. Spring of 1895.
Q. How long did he remain here in the spring of 1895?
A. I don't know when he left.
Q. When did he return here—in the fall of 1895?
A. Late—late in the fall.
561 Q. Do you know about what time—what month?
A. It must be about the first of December—about that time.
Q. And how long did he remain here, and when did he go back to Waukesha in 1896?
A. I don't know when he went.
Q. Did you see him here in the spring of 1896?
A. In the spring of 1896 I left here two days before Mardi Gras myself and wasn't here then.
Q. When did you see him here first in the fall of 1896?
A. I came here about the 27th of November myself, and between that and Christmas time I met him in the restaurant.
Q. And he remained here up to the time of his death?
A. Yes, sir; I used to see him occasionally there in the restaurant.
Q. Did you attend his funeral?
A. No.
Q. Were your conversations with him frequent or at rare intervals?
A. At intervals. I used to see him as I went to pay my checks at the lunch counter, at the office there, and he used to be near there. The last year he wasn't there as frequently as former years. Former years he was there nearly every day.

THOMAS NICHOLSEN.

Sworn to and subscribed before me this 15th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

FRITZ JAHNCKE, Esq., a witness for the proponent, being first duly and solemnly sworn according to law, deposes and says:

Direct examination by Mr. DART:

Q. What is your age?
A. I will be 50 this year.
Q. And what is your business?
A. Paver; contractor.
562 Q. How long have you been in the business?
A. Since 1871.
Q. You have followed that occupation very extensively, haven't you, in this city?
A. Yes, sir.
Q. Did you know the late Joseph Fabacher?
A. I did.
Q. Very well?
A. I have known him very well for quite a while.

Q. Do you know where he lived anywhere outside of New Orleans at any time?
A. Yes, sir; I know he lived in Waukesha.
Q. How do you know that?
A. Because I was up there and paid him a visit.
Q. When?
A. Last year.
Q. What time last year?
A. Well, I don't know; it was in the middle of the summer.
Q. Who was with you?
A. Mr. Brown.
Q. Which Brown?
A. L. W.
Q. Late city engineer?
A. Yes, sir.
Q. You went up there to pay him a visit or accidentally?
A. No; I went up there to pay him a visit. I was buying steamboats up there in that neighborhood, Chicago and Sheboygan, and that was simply a little trip off. I was in Milwaukee, anyhow, and I took a trip there to see Mr. Fabacher, since we were good, intimate friends.
Q. Did you have any conversation with him regarding his residence in Waukesha?
A. Well, that naturally came about; yes, sir; because I
563 drove up to his house; he showed me all through his house.
Q. What sort of a place was it?
A. I have known Mr. Fabacher. His place was an elegant place. I complimented him upon that, and he told me that there was two lots adjoining; he wanted me to buy them, and naturally he said that that was his home; he didn't want to go back to New Orleans unless his ma wants to come down here sometimes to see the children in the winter time, but otherwise he would never come back here.
Q. What was his "ma" that he was referring to?
A. That was his wife.
Q. Pet name for his wife?
A. Yes, sir; his wife.
Q. Did he repeat that to you?
A. Oh, yes; we were sitting at the table, taking dinner together, after that. They were all so much pleased that I came up there with Mr. Brown that the whole family stood around the table and wouldn't sit down while we were eating dinner. I insisted upon it that they should sit down; otherwise I would get up. They had prepared rooms for me, that I should stay there, but I could — stay any longer than about two or three hours.
Q. Will you please tell me what it was exactly that he said about coming back to New Orleans, as near as you can, from his words? How did the conversation originate, and exactly what was it he said?
A. I had a conversation; complimented him upon his nice home he had there. He said that that was his home there for all time to come. He didn't intend to come back to New Orleans unless per-

haps it was on a visit, because his wife wanted to come back to see the children perhaps once in a while; otherwise he would never come back to New Orleans, and he had everything he could
564 think of right there; and, by the way, he told me also that he had a tomb here in the cemetery; that I should look after that and fix that up in style; that that was about the only thing he had left here in New Orleans, and he said he wanted to get that fixed up in good shape.

Q. That is the line of your business, doing that sort of work?

A. That is the line of my business, doing that sort of work; yes, sir.

Q. Was anything else said about that tomb?

A. No.

Q. Did you look around his place? Was it fixed up?

A. Well, he had a great big place there, stable there, horses and carriage there—everything a man could think of.

Q. Did it appear to be a summer home, or what?

A. Well, I would be glad to have a winter home like that?

Q. You keep a summer home yourself, don't you, across the lake?

A. Yes, sir.

Q. What was the appearance of that place up there?

A. The appearance was finished about as nice as any residence a man could want. In fact, a residence for all times to live in.

Q. A permanent home?

A. Yes, sir; a permanent home.

Q. Would you know whether the surroundings or the furnishings were those for winter or summer if you saw them? What was the indication?

A. Well, the finishings of the doors were such as any man would want for a winter residence. In fact, I asked about them—the way the doors were grooved into each other. I says, "What's the matter with this here? If this is for the summer, it seems that this — nonsense." "Well," he says, "I want this for the winter." He says, "The doors have got to fit very close." You know
565 they build their houses in a different way there. Our doors shrink, and leave an air space, but they don't build that way. They don't want any air space. There they had sliding doors, if I am not mistaken, and they fitted closely together and I remerked about that.

By Mr. BUCK:

Q. Did you have the attention called to the heating apparatus used?

A. No.

Q. You don't know that he had a large heating stove and pipes ready for winter use.

A. No; know nothing about that.

Cross-examination by Mr. MCCALEB:

Q. You don't — it snows up there in that country in May and June, do you?

A. No; I do not.

Q. You never lived up in that section of the world, did you—any portion of it?

A. I have lived in New York.

Q. I am talking about Wisconsin.

A. No; never. It was my first visit there.

Q. Did you see any screen doors in his house?

A. I don't remember.

Q. They may have been there?

A. May have been there; I don't remember.

Q. Did he tell you to fix up his tomb, that he wanted to sell it, and put it in good fix first?

A. No; he didn't want to sell it. That was a family tomb.

Q. Did you ever visit him here in New Orleans?

A. Yes, sir; quite often.

Q. Where?

A. Up at his house before he sold it.

566 Q. And afterwards?

A. Afterwards I never visited him.

Q. Have you visited him within the last two years in New Orleans?

A. Well, that is more than I can recall right now. I visited him on Prytania street here. He had a home there, and he wanted to sell it. I was doing some work there for him.

Q. Did you ever visit him on Calhoun street?

A. No; not to my knowledge.

Q. Did you attend his funeral?

A. I did.

Q. Where was his funeral?

A. His funeral was from Calhoun street; yes; I remember I was up there then. That is true.

Q. Wasn't that his last residence?

A. I don't know. It seems he lived there.

Q. Why did you go to his funeral there?

A. Why?

Q. Yes.

A. Because he was a life-long friend; known him for fifteen or twenty years.

Q. Now, Mr. Jahncke, did not you see this funeral notice in the paper?

A. Well, I don't know whether I did.

Q. Just think about it. Wasn't that the reason that you went to his funeral?

A. I don't know whether I seen that. I very seldom read the papers in the morning, but I guess they might have telephoned from the restaurant up there.

Q. You don't read the papers, you say, in the morning?

A. Very seldom in the morning. I have got to get up at

567 six o'clock to attend to my business.

Q. Who spoke to you about your testimony being wanted in this case, Mr. Jahncke?

A. I guess Mr. Dart.

Q. Did Mr. Lawrence Fabacher speak to you?

A. I believe he spoke to me also; no; Mr. Lawrence Fabacher didn't speak to me. I remember that now. It was Mr. Peter Fabacher.

Q. Mr. Peter Fabacher?

A. Yes, sir.

Q. Did you see Mr. Joseph Fabacher after you met him in Waukesha last summer?

A. I have met him once here in the restaurant.

Q. When?

A. Can't tell.

Q. When did he tell you he intended to leave Waukesha to come back to New Orleans?

A. He didn't tell me so at all. In fact, I was surprised to see him back here.

Q. Do you know that he fell out of a hammock and got badly hurt up there last summer? Tell you that?

A. I know that.

Q. How do you know it?

A. Because he told me so.

Q. He told you so?

A. He showed me the spot where he fell on a stump.

Q. Was he — heavy drinker?

A. Not that I know. He would take his toddy like I would myself or like anybody else would.

Q. Did he tell you that he was under the influence of liquor when he fell out of the hammock?

A. Oh, no; he showed me the spot there. He said he wouldn't have hurt himself if it wasn't for the stump. The hammock
568 was only that much from the ground. I saw the hammock, and I saw the spot, and he was looking for it there, for a little stump, and there was a little stump sticking that much out of the ground (witness indicates about two inches) where a tree had been out.

Q. About two inches?

A. I don't think the hammock was even two feet from the ground, and the stump—well, we had to poke around there to find the stump.

By Mr. BUCK:

Q. You mean the stump on which he fell?

A. On which he fell. A heavy man like that, if he fell even the least bit—an old man like that, if he fell, he would hurt himself.

By Mr. MCCALEB:

Q. How old a man was he?

A. I have seen it right in the death notice; otherwise I wouldn't *not* have known it.

Q. 72 years old?

A. 72 years old.

Q. What injury did he sustain from that fall?

A. He was a little lame in the back.

Q. Do you know whether he wore a support on that account around his middle?

A. No; I don't think he did; at least I don't know anything positive about that.

Q. The last time you saw him before his death, in what condition of health was he?

A. He was in good condition. Let me explain that to you now. I met him in the restaurant there; he came over and spoke to me about his tomb, saying that I didn't attend to that. I made an appointment with him to meet him at the tomb.

Q. He was very solicitous about the tomb?

A. Yes, sir; he wanted to get that fixed up before he would go away, because he said he wouldn't come back. Now, I went
569 up there with him and met him there in the morning. I didn't want that work, because there was some marble-cleaning to do, and I asked one of the men there that keeps a shop over there—a marbleman—I asked him how much he would charge to fix up that tomb. Well, he told me so and so, and I said, "Go ahead and do it." Fabacher was standing alongside of me, and I said, "I think that is reasonable, if he will do you a good job," and I said, "I will see that he does do a good job," and he said, "All right; go ahead and fix it up," and that was the last time I seen him.

Q. What was the name of that man?

A. I guess it was the man who is the successor to Mr. McDonald, Mrs. McDonald's manager. I am not quite positive about that.

Q. How many members were there in Fabacher's family when you visited him at Waukesha?

A. Mr. Fabacher and Mrs. Fabacher and one son—no; two sons.

Q. One of them was a young man, Jacob?

A. Jacob was there.

Q. Ellis?

A. Well, I don't know the other boy; he was a good-looking fellow; in fact, he drove me about the place and showed me the springs afterwards, but I don't know his name.

Q. Was his daughter there?

A. I think so.

Q. And his grand-daughter, Miss Gress?

A. Well, I don't know. I don't know that he had a grand-daughter.

Q. Did you meet a lady there named Mrs. Gress?

A. I was there only three hours, and I didn't have time to talk much family affairs.

Q. Now, when he talked to you about this tomb, did he tell you he expected to be buried there?

570 A. He didn't say anything about it.

Q. Did he tell you whether any of his family were buried there or not?

A. Didn't mention anything at all about that.

By Mr. DART:

Q. How was it that I came to know that you were a witness or that you k-ew anything about the case, do you remember? Was it by seeing you purposely or some chance expression?

A. Oh, that was some chance, because we were talking along St. Charles street here, and you said you had taken some testimony, and I said Peter Fabacher spoke to me about that. "Well," you said, "I am an attorney in the case;" and I said, "When you want me let me know, because I am going across the lake." That was Thursday or Friday evening.

Q. You had been waiting for me, and I had just come in, hadn't I?

A. Yes, sir. In fact, you didn't speak to me to solicit anything, nor Mr. Peter Fabacher; but I was down there, and Lawrence had a boat coming from New York, and I wanted to get that boat to take a trip this week, and I was anxious to know when the boat came in. I heard that the boat had got in and went down to enquire about that—where it was—and then the talk came about.

Q. You spoke about his selling his Prytania house. Do you remember the occasion when he sold that house?

A. No.

Q. Do you remember the incident of the advertisement of his property?

A. No.

Q. Did you know he was going to sell his property?

A. He told me so all along—that is, some three or four years ago. First he wanted to rent it and couldn't rent it, it seems, and then he wanted to sell it.

571 Q. Did he tell you why he was going to sell it?

A. No.

FRITZ JAHNCKE.

Sworn to and subscribed before me this 15th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

HENRY WELLMAN, Esq., a witness produced, sworn, and examined on behalf of proponent, deposes and says:

Direct examination by Mr. DART:

Q. How old are you?

A. 52.

Q. What is your occupation?

A. Manufacturer.

Q. What position do you hold in New Orleans today?

A. President of a bank.

Q. President of the Teutonia bank?

A. Yes, sir.

Q. Also president of the Mutual Loan & Building Co., aren't you?

A. Yes, sir.

Q. Did you know Joseph Fabacher, who used to live here?
A. Yes, sir.
Q. How long had you known him?
A. Must have known him since 1872 or 1873—around there.
Q. Do you know whether at any time he left New Orleans; and, if so, when?
A. Well, I think, about three years ago, when he told us he had left for Waukesha.
Q. When — told "us." Whom do you mean by "us?"
A. I used to be around the restaurant there.
Q. You used to go around there?
572 A. Yes, sir; at the table he told me, about three years ago, it was. I think it is just about three years ago this spring, if I am not mistaken.
Q. And what did he say about going to Waukesha?
A. He was then going to Waukesha, and *and* he followed it up every year until a year or two ago, when he said he had built himself a house there to make a permanent home there, in Waukesha.
Q. Did he tell you he was going to make his permanent home there?
A. Yes, sir.
Q. What did he say about coming back to New Orleans, if anything?
A. Well, I don't recollect what he said in regard to coming back here. He said that he was going to make a permanent home there, but he left here two years ago; I think it is this spring two years ago when he left with his horses and carriages. I heard hi- making a contract with the railroad people to take his horses and carriages up to live there for good.
Q. You heard that conversation?
A. Yes, sir.
Q. You knew, then, he was going away from New Orleans?
A. Yes, sir.
Q. Have you seen him in New Orleans since?
A. Yes, sir; I have seen him a little while before he died.
Q. What season of the year, do you remember?
A. In the winter, about two months or three months ago.
Q. Did you have any conversation about his being here?
A. Yes, sir; when I seen him the first time when he arrived here I says, "Well, what's the matter? You people can't stand it in the cold climate; you have come back to us, haven't you?" He kind of smiled and said, "Yes; it was a little bit cold there for a couple of months, but I am going away as soon as the weather will permit."
573 Q. Did he say anything about his children down here at that time, or about his wife?
A. If I am not mistaken, he said that his wife would like to be down here a couple of months in the winter.
Q. You had known him, I imagine from the way you talk, rather socially and intimately?
A. Yes, sir; I met him almost every day when he was around in

the restaurant. I used to go down there every day to lunch, and there was a friend of mine and myself used to go there almost every day, and the old gentleman was in the restaurant, and of cours- he would always come over and speak to us and have a little chat.

Q. Did he tell you why he was going to Waukesha?

A. He said it was a climate which suited him better for his health. That is what I understood him; that was the reason.

Q. May I ask you also how it was discovered that you knew anything about it? Who spoke to you first?

A. What?

Q. Who spoke to you first about being a witness in this case? My friend has asked that question of the preceding witness. I ask you now who first spoke to you to be a witness in this case. Who first inquired what you knew?

A. Mr. Fabacher.

Q. Which one?

A. Lawrence.

Q. Did I afterwards inquire of you also?

A. Yes, sir; and also Mr. Buck asked me on the street one day.

Cross-examination by Mr. McCaleb:

Q. Is Mr. Lawrence Fabacher one of the directors of the Teotonia bank, of which you are president?

A. No, sir.

Q. He is a large stockholder of that bank, isn't he?

A. He is a stockholder.

574 Q. And a depositor?

A. Yes, sir.

Q. Did Mr. Joseph Fabacher have an account with your bank?

A. No, sir. You mean the old gentleman?

Q. Yes.

A. No, sir.

Q. Or a bank box in it?

A. No, sir.

Q. Now, when did you see Joseph Fabacher in New Orleans in the fall of 1896 first?

A. I couldn't tell you. I don't think I saw him in the fall at all. I think I saw him in the winter here.

Q. Saw him during the winter. When did you go to Waukesha, in the spring of 1896?

A. If I ain't mistaken, it must have been the latter part of April or first part of May.

Q. And when did he return?

A. Returned during the winter. I don't know if it was December or January.

Q. Don't you know he returned in November?

A. No; I do not.

Q. And remained here until he died? Did you ever visit his residence on Calhoun street?

A. No, sir; not until the day he was laid out. I saw it, though.

Q. How came you to go there then?

A. Went to the funeral.

Q. How did you know there was a funeral?

A. Of course I saw he was dead; saw the notice in the paper that he was dead, and went to the funeral like I would go to the funeral of any friend.

Q. Look at this issue of the New Orleans Picayune of March 4th and say, as to this funeral notice in that paper, whether you read it or not.

575 A. I don't read the Picayune.

Q. Well, the Times-Democrat; didn't you read the same notice in the Times-Democrat, a duplicate of that?

A. I don't recollect in what shape the notice was, but I know there was a notice in the Times-Democrat.

Q. Were you not very much surprised when you heard he had been a resident of this city for fifty-three years?

A. I didn't pay any attention to his residenceship at all. I know he was sick for the last few days and I noticed in the morning——

Q. Were you surprised to learn that he was to be buried from his residence here in New Orleans?

A. No; I wasn't surprised that he was — buried here in New Orleans when he was stationed here.

Q. You read his biography in the newspaper?

A. What?

Q. You read his biography in the newspaper?

A. Yes, sir.

Q. Were you not very much surprised that in those funeral notices the Waukesha papers were not even requested to publish?

A. I didn't take any notice of the Waukesha papers.

Q. You twitted him that he had come back to New Orleans; that it was too cold for old people up there, did you?

A. That's what he said. He invited me several times to come up there, and I never had a chance to go to Waukesha. I would have liked to go up and spend a few weeks with him.

H. WELLMAN.

Sworn to and subscribed before me this 19th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

576 JEFF. C. WENCK, Esq., a witness produced on behalf of the proponent, being first duly sworn and examined on his *voir dire* by counsel for contestant, Mr. E. H. McCaleb, deposes and says:

Q. You are a notary public in this city?

A. Yes, sir.

Q. You passed a number of acts in which Joseph Fabacher appeared as vendor in the winter, spring, and summer of 1895, did you not?

A. I recollect passing the acts, but I don't the dates.

Counsel for contestant objects to any and all evidence on the part of this witness going to contradict the statement of Joseph Fabacher, contained in those acts, as — his residence.

Direct examination by Mr. BUCK:

Q. You passed the acts of sale of his property in 1895?
A. About that time; yes, sir.
Q. You have, of course, the originals on file in your office?
A. I have the originals on file.
Q. At that time did you hear any statements on the part of Mr. Fabacher, either made to yourself or to others in your presence, as to his future intentions with regard to residence?

Objected to by counsel for contestant on the ground that the acts speak for themselves, and the witness can neither explain, contradict, alter, or vary any enunciation contained in said notarial acts. Counsel for proponent states the object of the testimony is not to contradict the act or to affect anybody who may be a party to those acts, but to prove declarations made by Mr. Fabacher as to the reason why he was selling the property and what his intentions
577 were in regard to the future, in reference to residence alone, which in no manner conflict with the act or with the declations therein contained.

Q. What were his declarations?
A. He stated that he was going to sell all his possessions in this city in order to remove to Waukesha, where he had already a home, and he was going to reside there in future.
Q. Reside there how?
A. Permanently make that his home.
Q. He was explicit about that?
A. Very explicit.
Q. You can't be mistaken?
A. No.
Q. You knew him personally?
A. Personally.
Q. Knew about his relations and affairs in a general way?
A. In a general way; yes.
Q. And had this conversation when the acts were being passed?
A. About that time.
Q. Was anybody else present, to your recollection?
A. I think my clerks were present. Whether they heard the conversation or not, I don't know.
Q. You were born in this city, Mr. Wenck?
A. I was.
Q. Your father lives here?
A. He does.
Q. He is about how old a man?
A. 81.
Q. He had been an old friend and companion of Mr. Fabacher's himself, has he not?
A. He has.

578 Q. You have practically known Mr. Fabacher yourself during the whole period of your growing up?

A. For about ten years.

Q. Do you know whether Mr. Fabacher at the signing and execution of these acts had any trouble to see or any trouble to hear?

A. I think his eyesight was good. His hearing, I think, was good also. He had a habit of asking a repetition of a question as a rule. I don't think it was on account of a defective hearing, though I am not in a position to say. I did have to talk to him a little louder than usual.

Q. He was a very careful man in the passage of those acts, was he not, or generally in matters of business?

A. Yes, sir; he used ordinary care; I guess the same as any other man in business of that kind.

Q. In other words, he wanted to understand everything before he did anything?

A. Yes; he did.

Q. Was that the only conversation you had with him or were present at in which he referred to Waukesha as the place of his future residence?

A. No. I has two or three conversations with him where he referred to it.

Q. In which he made similar statements?

A. Similar statements.

Q. To the same effect?

A. Yes, sir.

Cross-examination by Mr. McCaleb:

Q. Who held his power of attorney here, Mr. Wenck?

A. I don't know.

Q. Did Mr. Lawrence Fabacher ever speak to you about this matter?

579 A. No, sir.

J. C. WENCK.

Sworn to and subscribed to before me this 18th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

R. A. Corbin, Esq., a witness produced, sworn, and examined on behalf of proponents, deposes and says:

Direct examination by Mr. Buck:

Q. Where do you reside?

A. I reside at Hammond, La.

Q. You spend much of your time in the city of New Orleans?

A. Well, I have been; for the last three or four months, the last six months, I have been spending a great deal of my time just across the river with my son in Gretna.

Q. You have lived — parts all your life?

A. I have been here twenty-eight years.

Q. I don't like to ask you your age, but you are a man in full life?

A. Fifty-six last February.

Q. You knew the late Mr. Joseph Fabacher?

A. Yes, sir; I have known Mr. Fabacher for about fifteen or sixteen years.

Q. What is your business?

A. I have been trading in mules and horses here for a number of years on Barronne street.

Q. You knew Mr. Fabacher well?

A. Yes, sir; I have known him very well for the last fifteen years.

Q. Do you know anything of his manner of living in the last five or six years and habits of going away from here to live elsewhere?

580 A. Well, I have known Mr. Fabacher to go to Waukesha for the last five or six years.

Q. Have you known anything about his final intentions in regard to making that his permanent home?

A. Well, only what he told me.

Q. Well?

A. I think about two years ago I was here and met the old gentleman. He said, "You are a great trading fellow. Now, I have got a trade for you." He says, "I want to sell you my house, corner of Prytania." I had been up there and looked it over once or twice. He says, "I am going to Waukesha to live. I am going to make it my permanent home, and I am going to sell my place;" and I wanted to buy a place for my son-in-law, Mr. Johnson. I laughed at the idea. "You are not in earnest about going away from here." "Oh, yes," he said "I am going to Waukesha to make it my home. The climate suits me. I am so pleased with the climate and it had done me so much good during my stay there that I am going there to live. I will soon come back here to see you all a little while in the winter—spend a month or two with you—but I am going to make Waukesha my home."

Q. And that was about how long ago?

A. That was two years ago, I think, in the spring of 1895. I remember the old gentleman going up. I was down here a few days before he went away. He says, "I am going away on a certain date." I says, "Mr. Fabacher, I will meet you at Hammond and give you a nice case of strawberries to take along," and I met him at Hammond and did give him a case of nice berries.

Q. You met him on the train?

A. Yes, sir; and his family were on the train.

Q. Did anything pass between you then?

A. He says, "Good-bye; I am gone from Louisiana. Come and spend some time north with me this summer."

581 Q. You are sure he stated, "I am gone from Louisiana"?

A. Yes, sir; he says, "I will let you have my house;" that was the time he was making the move.

Q. Did he have his family with him at the time?

A. Yes, sir; Mrs. Fabacher and a little boy.

Q. Hammond is a little town on the I. C. road?

A. Hammond is fifty-two miles from New Orleans, just the place where all trains stop for lunch; they all lunch there; generally spend from five to ten minutes, usually.

Q. You did not purchase his home on Prytania street?

A. No, no, sir; I was hardly there at the time. I did not. I came down again a few days——

Q. You know that he did sell?

A. Yes, sir; I came down a few days after he had sold it.

Q. What kind of a place was that for a home in this city?

A. Oh, very desirable, and a very pretty one; very nice place.

Q. And the building occupied about how much ground?

A. I think, maybe, three lots; probably four. He had a nice garden—fruit trees. He was very much pleased with his peach trees growing there. He had a very pretty place, sir: very desirable home, indeed.

Q. Perfectly finished and fitted home?

A. Oh, yes; nicely fitted up. He had a nice place there; very lovely place there; lovely place.

Q. Did you see him here in the city last winter before his death?

A. Yes, sir; I met Mr. Fabacher here probably a week or two weeks before his sickness; a week, probably.

Q. Was there any conversation then between you and him?

A. Well, yes; the usual congratulations. I was glad to see him, and asked him how he had been; how long he had been down. He said he had just come down to spend a few weeks.

582 Q. Did he say anything whether his wife was with him?

A. Well, I don't remember now. I think he did probably say that his family had come down to spend a few weeks or a few months.

Cross-examination by Mr. McCALEB:

Q. Don't you know that after he sold his house on Pryntanis street that he was accustomed to spend six months of the year in New Orleans?

A. No, sir; I do not.

Q. Do you know when he returned here in the fall of 1895?

A. I don't know just when he came.

Q. Do you know when he left here in the spring of 1896?

A. He left here in the spring of 1895, or the time I think I gave him the strawberries.

Q. Well, what time did you see him back here in the fall of 1895?

A. That I don't remember.

Q. How long did he remain here during 1895 and 1896 before he went away?

A. That I don't remember.

Q. Did you have any business dealings with Mr. Lawrence Fabacher or his restaurant?

A. Yes, sir; we had. I didn't have directly; my son had some business with him.

Q. Your son furnishes that restaurant with milk?
A. Some milk; yes, sir.
Q. Who spoke to you about giving you- testimony in this case?
A. I think Mr. Peter Fabacher.

R. A. CORBIN, SR.

Sworn to and subscribed to before me this 25th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

583 CHRISTIAN SCHOPP, Esq., a witness produced, sworn, and examined on behalf of proponents, deposes and says:

Direct examination by Mr. BUCK:

Q. You have been a citizen of this city how many years?
A. Well, forty-eight, about.
Q. How old a man are you, about?
A. Well, I am passed seventy-two.
Q. Did you know the late Mr. Joseph Fabacher very well?
A. Yes, sir.
Q. Did you know anything about his selling his property and moving away from here?
A. I know when he sold his property and when he moved away, too.
Q. Do you know where he went to?
A. He went to Waukesha.
Q. Did you ever have any conversation with him about that? Did he ever tell you that he was going to do that?
A. He told me some time before that whilst up there myself, when he bought one lot, and he sold out again and he bought another one, so he told me, and on this one he built.
Q. You were up in Waukesha with him?
A. Yes, sir; at one time.
Q. Just one time? Did he tell you anything, whether he intended to remain up there—make his home in Waukesha?
A. He told me that he had moved up there and stayed up there.
Q. And you understood that he moved away with that intention from what he told you?
A. The intention, so he told me; that he had moved up there and stayed up there.

584 Cross-examination by Mr. McCALEB:

Q. You are seventy-two years old, aren't you, Mr. Schopp?
A. Yes, sir.
Q. Where are your wife and children living?
A. They are living here in New Orleans.
Q. When do you expect to move on to Waukesha?
A. Well, I don't move off at all, I think. I might go up once again. I am not sure, though.
Q. Make your permanent home there?
A. No, sir.

Q. Well, now, look here, when people get as old as you are, do they generally run off a thousand miles away from their children and family and make their home in another State?

A. Well, some, you see, think one way, and another, this another way. For my part it is good enough in New Orleans. I would like to get of- a month or two, if I could do so.

Q. Isn't it a fact that the older you get the more you feel attached to localities?

A. Localities?

Q. Yes; to a place. Isn't it a fact, Mr. Schopp?

A. Yes, sir.

Q. Don't you feel every year more or less indisposed towards moving about, going away from here?

A. No.

Q. You like to go?

A. Yes.

Q. Don't you know that young folks like to move, but the old folks don't?

A. Well, some old folks might like to move just as well as young folks. It is just how a man has got his opinion and his mind.

585 Q. Now, Mr. Schopp, how long had you known Mr. Joseph Fabacher before his death?

A. Well, I know him anyhow about forty years. I know him pretty soon after I came here; not right after, but pretty soon afterwards, when I came here, and I came here in 1849.

Q. Do you know when he came here? Did he ever tell you?

A. The very day?

Q. Did he ever tell you when he came here? What year?

A. Well, he told me, but I forgot it. He came here before me.

Q. Do you know how long before?

A. No; I can't say.

Q. Do you know his first wife?

A. No, sir.

Q. Do you know the children by his first wife?

A. No, sir.

Q. Do you know when he was married to his last wife?

A. I don't know that, either.

Q. How many children and grandchildren did he have here?

A. Who?

Q. Mr. Joseph Fabacher.

A. Well, really, I couldn't tell you how many children he has got. I can't tell you that exactly.

Q. Were you accustomed to visiting his family?

A. Sir?

Q. Were you accustomed to visit him?

A. I visited him several times.

Q. Did you ever visit him on Calhoun street?

A. I visited him there; yes. That is Calhoun street where he died?

Q. Where he was buried; yes.

A. That is Calhoun street, is it?

Q. Yes.

586 A. Well, I visited him there.

Q. How often were you over to see him, Mr. Schopp?

A. Well, I was there several times before he went and I was there the last time. I believe I have been there in January.

Q. You were there several times before he went away—last year—1896?

A. I was there. I don't know how often.

Q. Whom did you meet there in his household, in 1896, before he went away?

A. Well, I don't know who I met. His wife. I don't know if I met anybody else. I am not quite sure.

Q. How long did you remain there?

A. Not long.

Q. Was his house, his residence there, fixed up?

A. Yes, sir.

Q. Furnished?

A. Yes, sir.

Q. Comfortable?

A. Comfortable.

Q. Nice house?

A. Yes, sir.

Q. Worth about how much?

A. Well, I don't know. I didn't like to build one like that.

Q. And how many times were you there after he returned in the fall of 1896?

A. After he returned in 1896, I believe I have been there once.

Q. And what members of his family did you meet at his residence on Calhoun street when you went there after his return in 1896?

A. His wife.

A. Anybody else?

A. I don't recollect.

587 Q. What time did he leave here in the spring of 1896?

A. Well, really, I don't know that any more. I saw him late before he went up, but I couldn't tell you exactly when.

Q. What time did he come here in the fall of 1895?

A. I don't know that, either.

Q. Now, don't you know, Mr. Schopp, that after he first went to Waukesha that he always came back here and spent six or seven months of the year?

A. He spent here again every winter.

Q. Didn't he come here in the fall and go away in the spring—remain over there?

A. Yes; he did that, as much as I know.

Q. How came you to go to his funeral?

A. Sir?

Q. How came you to go to his funeral?

A. How came I to go to his funeral?

Q. Yes. How did you know it?

A. Well, that is a curious question that you ask me now. How did I go to his funeral?

Q. Yes.

A. I didn't go there at all. Now, you ask me a mighty foolish question.

Q. You were not there?

A. No, sir; I was not there at all.

Q. I thought you stated you had been.

A. No, sir; I was not there at all. That is a curious question, how it comes that I go to his funeral.

Q. Did you read his funeral notice in the newspaper?

A. Yes, sir; I did.

Q. Did you see in that funeral notice that he was a resident of this city for fifty-three years?

588 A. Well, I didn't read the funeral — at all. I saw it, but I didn't read it.

Q. Then, you did not read it?

A. I saw the funeral notice, but I didn't read it over. Of course, I know he got married.

Q. Who spoke to you about your testimony in this case?

Q. What?

Q. Who spoke to you, told you, that your testimony would be wanted in this case?

A. Who spoke to me?

Q. Yes. Did Mr. Lawrence Fabacher speak to you about it?

A. No, sir.

Q. Who did?

A. Mr. Buck asked me if I could come here, that's all, but Mr. Lawrence Fabacher didn't ask me.

Q. Do you know how many children and grandchildren Mr. Fabacher had in this city?

A. No, sir; I can't tell you, and I don't know exactly how many, whether seven or eight or how many it is.

Q. Then, you are not well acquainted with his family?

A. Well, I was acquainted with him, but of course they were not home, his children; most of them were out.

Q. Did you see his house in Waukesha after it was built?

A. No, sir; didn't go up there after that.

Q. Then, you never saw him in Waukesha since three or four years ago?

A. No; I didn't see him up there. It is longer than that when I saw him in Waukesha.

By Mr. Buck:

Q. You were a witness in division "A" of the civil district court three days ago, were you not? You were a witness in the case down in court here?

A. Yes, sir.

589 Q. It was there where I met you?

A. That's right; that's where you met me.

Q. An accident, as it were?

A. Yes, sir; an accident; and *you* asked me if I could come here.
Q. In other words, I did specially send for you?
A. Oh, no; I met you down there and you asked me then if I could come here, that's all.

By Mr. DART:

Q. The gentlemen asked you something about people traveling and going around after they were up around seventy years old. You are fond of going away yet, aren't you?
A. What?
Q. The gentleman asked you something about people traveling and going around after they were up along seventy years old. You are fond of going away yet, aren't you?
A. Oh, yes; I am.
Q. You made a trip through Europe not long ago?
A. No; that is twelve years ago.
Q. After you were sixty?
A. After I was sixty; yes, sir.
Q. You would go away again if you had the chance?
A. No; I wouldn't go to Europe. I don't like to go so far. I like to go three or four weeks across the lake, or two or three months.
Q. I wanted to find out if old people are any different from young people.
A. Well, I don't know.

By Mr. BUCK:

Q. Mr. Fabacher was a strong man?
A. Well, you say I am an old man, and I say I am younger
590 than my sons yet, because I have got a better and stronger constitution than my sons.
Q. That is to say, if you wanted to travel, you would not be afraid to go?
A. Oh, no; I am not afraid to go. I could stand a great deal.

By Mr. DART:

Q. Fabacher was a strong fellow, wasn't he?
A. Oh, yes; he was a stronger man than I am. Sometimes I was heavier than he, but lately he *could* heavier; he beat me.

By Mr. MCCALEB:

Q. Was he hard of hearing?
A. Who?
Q. Fabacher?
A. Yes, sir; sometimes a little.
Q. Didn't you have to talk pretty loud to him?
A. Had to talk pretty loud to him.
Q. Didn't he talk pretty loud himself, like most deaf people do?
A. Well, I have a habit on me that I talk pretty loud, too. I think some don't hear well, and so I have got a pretty loud talk on me.

Q. How was his eyesight?
A. Well, his eyesight, I believe, was better than mine.
Q. You wear spectacles, of course?
A. No, I don't wear them, but I don't see anything with specs and I see very little without specs.
Q. You have to use spectacles to read?
A. Well, I can read the English paper, but very fine print I can't read. I can read large print. I can write all the things I do; I can do that myself, but I don't wear any spectacles. I don't see anything with specs and I see very little without specs, but
591 I have always said I have gone seventy two years without specs and I want to do without them if I can help it.

CHRISTIAN SCHOPP.

Sworn to and subscribed before me this 18th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

HENRY HALLER, Esq., a witness produced, sworn, and examined on behalf of proponent, deposes and says:

Direct examination by Mr. DART:

Q. How old are you?
A. I am sixty-two.
Q. How long have you lived in New Orleans?
A. Since 1852.
Q. What is your business now?
A. My business is merchant and manufacturer.
Q. In what particular line?
A. Hardware line, stoves and hardware manufacture and tinware.
Q. You are at the head of rather a large concern, too, aren't you?
A. Yes, sir.
Q. Did you know Joseph Fabacher, who is dead?
A. I knew him ver- well.
Q. How many years did you know him?
A. Well, I guess I knew Mr. Fabacher ever since he started that saloon on Custom-house street.
Q. About how many years ago?
A. Between Decatur and Chartres.
Q. About how many years ago, do you suppose?
A. That w-s right after the war.
Q. You kept track of him ever since—been friendly with — ever since?
A. Kept track; I was acquainted with him; yes, sir.
592 Q. I mean by that that you met him and associated with him?
A. Oh, yes, sir.
Q. Do you know whether he ever left New Orleans to go anywhere else?
A. The only time I ever knew he left here was going to Wauke-

sha. I was at the hotel myself, at the National hotel, in Waukesha, when he wrote me a letter to my headquarters there. I forget the year, but it was about six or seven years ago. I was going to Waukesha for sixteen or seventeen summers in succession, except last season, since 1882.

Q. Then you know that Mr. Fabacher went there first to the hotel with his family?

A. He was boarding at the hotel; yes, sir.

Q. What did he ultimately do there?

A. Well, the end of it was that somebody built a house up there. I believe that Mr. Lawrence was up there, if I am not mistaken. He built a house upon the hill and he lived there; that's all I know.

Q. Mr. Joseph Fabacher did that?

A. Yes, sir.

Q. Were you ever in that house in Waukesha?

A. Very frequently.

Q. Very frequently?

A. Yes, sir.

Q. How was it furnished?

A. The house was furnished in good style for any person to live in all the year around; a home. He had a heater in the basement, hot-air pipes leading to every room and in through the hall. I believe they went in through the hall, but I know they were in the rooms.

Q. Was the house built so as to be warm and comfortable?

593 A. Oh, yes; built to answer the purposes all the year around.

Q. Did Mr. Fabacher ever talk to you while you were visiting him about his intentions there, as to staying there?

A. Well, yes; I didn't speak to him. He spoke to me about it.

Q. What did he say?

A. He said he was going to live up there permanently; that is the reason he built that place. He said he even had the gas and water brought there. He had a Mr. Connelly who lives next to him up there. He paid for it with the understanding that they were to be paid back as soon as other people up there would take advantage of that.

Q. The house, then, from what you say, was a permanent house?

A. Oh, yes; I think if I had been fixed up there like that I wouldn't have come down here myself, in that house.

Q. If you were fixed to stay there, you mean like he was?

A. Oh, yes; he had the prettiest place in Waukesha.

Q. He was out of business, wasn't he?

A. Oh, yes.

Q. Nothing to keep him there?

A. No.

Q. You know that he did have that in his mind to stay there all the time?

A. Undoubtedly.

Q. Do you know whether he sold any property in New Orleans?

A. Yes, sir; he told me he did.
Q. He told you he did?
A. Yes, sir; he told me he had sold every stitch.
Q. He came back here occasionally, didn't he?
A. Yes, sir.

Counsel for contestant objects to the evidence on the ground that the acts of sale are the best evidence as to his selling the property.

594 Q. He came back here, didn't he?
A. Yes, sir.
Q. How do you know?
Q. At the request of his wife, I think, within the last couple of years.
Q. Did he tell you why he came?

Objected to by counsel for contestant on the ground the wife is living and can speak for herself, and any statement made by her or her husband must be testified to by herself.

Q. Did he tell you why he came down here?
A. Sir?
Q. Did he tell you why; did he give you any reason outside of what his wife asked him for coming down here?
A. No; but he said he wanted to stay up there and live there; that's what he said; that he had his house arranged for that purpose.
Q. Did you meet him at any time when he came to New Orleans for the winter?
A. He did, but very seldom. I met him at Mr. Fabacher's restaurant sometime-.

Cross-examination by Mr. McCaleb:

Q. Did he ever buy a stove from you?
A. Mr. Fabacher, in the last two or three years; no, sir.
Q. Did you ever visit him while he resided on Calhoun street?
A. On Calhoun street, I never seen him once there.
Q. Did you attend his funeral?
A. I am never in the habit of going out visiting.
Q. I say, did you attend the funeral?
A. No; my wife did. I had no time or else I would.
595 Q. You saw the publication of his death notice?
A. Who, Mr. Fabacher?
Q. Yes.
A. Yes, sir.
Q. In the New Orleans Picayune?
A. Sir?
Q. In the New Orleans Picayune?
A. I suppose I did. That is about the only paper I read.
Q. Look at this in the New Orleans Picayune of the 4th, and say if you saw that.
A. Sir?

Q. Look at that publication of his funeral notice in the New Orleans Picayune of the 4th.

A. I couldn't tell exactly, Mr. McCabe.

Q. You don't know whether you saw that?

A. Because that thing was well known all over the city, and I saw it probably when I read the paper, but that I took any notice of it—I knew it before it appeared in there, because I heard it from the Touro infirmary.

Q. Do you know that he had been a resident of New Orleans for fifty-three years?

A. I think I do. I don't—that I know him for fifty-three years, but I knew him right after the war, as I kept a house on Custom-house street.

Q. Did you know that he was going to be buried from his late residence on Calhoun street?

A. I did not. He was at the Touro infirmary when I heard of it.

Q. Did you know he was registered at the Touro infirmary as a resident of New Orleans for forty-two years, and residing at No. 1716 Calhoun street, in this city?

A. I do not.

596 Q. Then you were not accustomed to visit him at his residence?

A. No, sir.

Q. Do you know how many months of the year he spent in New Orleans after he went to Waukesha?

A. I couldn't tell you.

Q. Do you know whether he returned here with his family and that his children went to school here?

A. Sir?

Q. Do you know whether he returned here with his family in the fall, and that his youngest children attended school during the scholastic year?

A. Well, I don't know whether he came here for that purpose. I don't know anything about his family affairs.

Q. Do you know that his youngest children made their first communion here in the Catholic church?

A. I don't know that, even.

Q. Then your relations toward him were not of an intimate character?

A. Not here. I very seldom seen him, but in Waukesha we were very intimate; saw each other every day; played cards together.

Q. Didn't he have a crescent over his house in Waukesha?

A. Crescent; yes, sir.

Q. Didn't that indicate he was from the Crescent city?

A. No, sir.

Q. That was his coat of arms of Germany, was it?

A. No, sir; he had done that for fun.

Q. He was a heavy drinker?

A. Not that I know of; took his drink occasionally.

Q. Did you ever see him under the influence of liquor?

A. Very seldom.

Q. How often?

597 *Q. How often?*

A. Oh, that I can't tell you. I was not with him all the time. He was all right in the daytime. I don't know what he did at night. We played cards together many a time, and I always saw him O K.

Q. He was quite fond of a game of cards?

A. Yes, sir; me and him and Mr. Moerlein, the brewer of Cincinnati, played cards at his place together.

Q. How was his hearing?

A. Sir?

Q. How was his hearing?

A. His hearing was all right.

Q. Wasn't he deaf?

A. Well, he may have been when some wagons passed close to him. He could hear playing cards very well.

Q. Then his deafness was a pretense?

A. Oh, I don't know. He may have been a little off on that thing; I don't know.

Q. Didn't he speak very loud?

A. Oh, he spoke loud enough to understand him, but not extra loud that I know of unless he got mad.

Q. You don't know anything about his being in Waukesha in the summer of 1896. I think you stated you were not there last year?

A. 1896 I was not there; no, sir; I was here.

Q. You haven't seen him there since 1895?

A. I haven't seen Mr. Fabacher since 1895, I don't think.

Q. That is nearly two years ago?

A. Yes, sir; I did see him in the restaurant—in Mr. Fabacher's restaurant.

Q. You saw him here, but you haven't seen him in Waukesha since the summer of 1895?

A. No, no; I was not there.

598 Q. But you saw him here, though, in the fall of 1895 and the winter of 1895?

A. I saw him very often in Mr. Fabacher's restaurant.

Q. The winter of 1895 and spring of 1896?

A. I think I did, in the restaurant.

Q. And you saw him again in 1896 and 1897, did you?

A. I think so. I am pretty sure of it.

Q. Who spoke to you about your testimony in this case, Mr. Hallmer?

A. Who spoke to me? Mr. Lawrence Fabacher asked me to come down.

Q. Asked you to come down here and give your testimony?

A. Yes, sir.

By Mr. BUCK:

Q. You were not influence- in your testimony by anything Mr. Lawrence Fabacher said?

A. No, sir; I am only giving facts; that's all.

Q. You are only giving the facts?

A. Yes, sir.

By Mr. MCCALEB:

Q. The reason I asked you that is merely to show that Mr. Lawrence Fabacher had the interest in the case to call you here as a witness.

A. All right, sir.

H. HALLER.

Sworn to and subscribed before me this 19th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

GEORGE WEGMANN, Esq., a witness produced, sworn, and examined on behalf of proponents, deposes and says:

Direct examination by Mr. BUCK:

Q. How long have you been living in the city of New Orleans?

A. I have been living here about twenty-one years.

Q. You knew the late Joseph Fabacher?

A. Yes, sir.

599 Q. You were distantly connected with him?

A. Yes, sir.

Q. By relationship, were you not?

A. Not in business.

Q. What relation are you to the family of Joseph Fabacher?

A. Mr. Fabacher was my uncle.

Q. Was your mother's brother?

A. My mother's brother.

Q. Did you meet Mr. Fabacher often in this city?

A. I did sometimes; as long as he was in town.

Q. Wasn't he in town the last few days before his death?

A. No, sir; he was not.

Q. Where did he live?

A. From what I know, he was in Waukesha with his family. I know he was in Waukesha, from what he told me; bought a home in Waukesha—that's all I know—Wisconsin. I believe he said Wisconsin.

Q. What did he tell you about his home in Waukesha?

A. He told me——

Q. Or to anybody else in your presence?

A. He told me the day before he went to the hospital, down at Mr. Hufft's, as it just happened that I met him there, and I wished him a happy New Year's, and we sat down together and we had a little drink. He took a little kirschwasser, as we call it in German, and I took a little, and he spoke about his home, and he said it was

the last time he would come back here and was sorry he had come down. He said he wouldn't have come down if it hadn't been for his wife, and he says if ever he got back again he would never come back any more. He told me that he had good health North, and whenever he went back again he would never come down here any more, and he had a letter from a cousin of mine in Europe and a cousin of him also that he had sent out some money for the children,
600 making their first communion, and I had an answer back that he had received the money, and he *rad* the letter without specs; and I says, "Uncle, what's this? You can read a letter without specs;" and he says, "Yes;" and I says, "I can't, and I am quite young." I was astonished.

Q. That was a few days before you heard that he was sick?

A. One day, and I was astonished when I heard of it. It was in the morning when he was up to the Touro infirmary.

Q. How old a man was he at that time?

A. My uncle was in the seventies. My ma was seventy-six when she died, and I don't know exactly how old he was by the year, but I know he was in the seventies. He was the youngest of all the children.

Q. He was otherwise a strong and hearty man?

A. I told you so.

Q. When did you hear he was sick, after that; how long after that?

A. Two days afterwards.

Cross-examination by Mr. McCaleb:

Q. What is your business?

A. Grocery, grocery and bar-room.

Q. Where?

A. Ninth and Chippewa streets.

Q. Who asked you to come here and testify in this case?

A. Somebody telephoned me about an hour or two ago.

Q. Did Mr. Lawrence speak to you about your testimony?

A. Mr. Lawrence Fabacher spoke to me about it some time ago. Let's see, when was it? I was called on about two hours ago through a telephone that I should come here at room 16, in this hall here.

Q. Did you ever tell Mr. Lawrence Fabacher the substance of your testimony that you have stated here today?

A. Mr. Buck asked me——

601 Q. I am asking you about Mr. Lawrence Fabacher; did you ever tell him the substance of the testimony you have given here today?

A. If I told him all about this?

Q. Yes.

A. Before that?

Q. Yes.

A. I was here, and I told Mr. Buck, not Mr. Fabacher.

Q. Did you tell Mr. Lawrence Fabacher?

A. Not as I know of, to my *ac*knowledge.

Q. When did the old man go away, in the spring of 1895?
A. I can't tell.
Q. When did he come back, in the fall of 1895?
A. He was our uncle, but we always had to do for ourselves. We have got big families, and we never interfered with one another in business that way. He went off and come back and went off and came back.
Q. When did you first see him, in the fall of 1895?
A. I couldn't tell.
Q. Did you see him in December, 1895?
A. No, sir; I couldn't tell; I couldn't swear to it.
Q. Did you see him in January, 1896?
A. No, sir.
Q. Or February, 1896?
A. No, sir.
Q. Or March, 1896?
A. I may; I don't deny that; I may have seen him once, but very seldom I did so.
Q. Do you know what time he left here in 1896?
A. What time he left here in 1896? I can't say that if I did; I know about what time he went off, but I can't tell when.
602 Q. Don't you know that he stayed here every winter, fall, and spring, six or seven months of the year?
A. Oh, no; not six or seven months; no, sir; he did not, sir.
Q. If you don't know when he came, and you don't know when he went away——
A. I know he didn't stay here that long.
Q. If you don't know when he came and you don't know when he went away, how do you know how long he stayed here?
A. Well, I know he didn't stay here that long, because when he went away, he went away early in the spring and stayed up there all summer and fall, until late in the fall, so he couldn't stay here six or seven months in New Orleans and up there in Waukesha over eight months; that could not be.
Q. Don't you know that he stayed here during the months of November, December, January, February, March, and April of each year?
A. In 1896?
Q. Yes.
A. No, sir.
Q. Then when did he go back there in 1896?
A. I told you before I could not tell you because I did not meddle in his business. He was man enough to take care of himself, and I didn't bother about what he did.
Q. Don't you know that he did not go back there until about the 8th or 9th of May, 1896?
A. May, 1896? I could not swear to what I don't know; I couldn't tell you.
Q. Don't you know that he returned here about the 17th or 20th of November, 1896?
A. I know he came back, but I couldn't tell you when it was.

Q. Don't you know he had his family tomb here?
A. Certainly; I know that a long time ago; yes, sir.
Q. Don't you know he requested and desired to be buried in that family tomb?
603 A. That *U* don't know. I know he said, and he made the remark once, that if he died he didn't care where they were going to bury him. They might just as well bury him up there or bring him here.
Q. When did he say that—in whose presence?
A. The Monday before he went to Touro infirmary.
Q. To whom?
A. To me and my brother.
Q. Where?
A. Down by Mr. Fritz Hufft's.
Q. What time of day?
A. Between 12 and 1; a little after 12.
Q. What day of the week?
A. On a Monday.
Q. Don't you know that he was a religious man and a Catholic?
A. He was a religious man, but not very strict. He was a man that did what he pleased. He was a man that knew what he wanted and never asked any odds of anybody.
Q. Don't you know he made his duties?
A. That is not my business. I didn't follow him in that. I think everybody ought to do what he pleases in that way.
Q. Don't you know the Catholics desired to be buried in consecrated ground?
A. Certainly; I know that much.
Q. You are a Catholic, aren't you?
A. Yes, sir; I am.
Q. He told you he did not care where he was buried?
A. That's right, sir. That's the kind of a man he was. That's what he said the day before he went to the Touro infirmary.
Q. What business relations have you with Lawrence Fabacher?
A. None at all, sir.
604 Q. Did you know Mr. Joseph Fabacher's first wife?
A. Yes, sir; I knew her.
Q. Did you know her children?
A. I did.
Q. When did her son die?
A. Well, that, my dear man—that is hard to tell. I have got a big family and a business to look after, and that is more than I can remember. I know he brought me beer when he was driving a beer wagon, but I can't remember the date he died. I never bothered about it.
Q. Do you know when Mr. Fabacher was married to his last wife?
A. I do.
Q. Was it in the parish of St. Landry?
A. So much as I know. I wasn't there when it happened, but I know he got married there.

Q. In 1874?

A. That's right.

Q. Do you know whether he was divorced from his first wife or not in 1874?

A. I heard of it. I wasn't there. I heard they got divorced, and she was here in New Orleans. She asked for a divorce herself.

Q. About how old a man is the eldest son of Mr. Fabacher?

A. The eldest son of Mr. Fabacher from the second wife?

Q. Yes.

A. That is more than I can tell you, my dear sir. I can't tell you that. I know him perfectly, but I don't know how old he was. I never inquired or never asked.

Q. Why?

A. I never bothered about anything like that, because he lived up in the country, ans we never got near one another, and I saw him very seldom except when he came down in town.

—. ——.

605 A. I don't know which is the second son. I can't tell you.

Q. How old is Mr. Lawrence?

A. That I don't know. I can't tell you. I am not going to tell a lie.

Q. How old are you?

A. I believe I am pretty near 49. I was born in 1848, in November.

Q. Didn't you know these boys when they were youngsters?

A. Sir?

Q. Didn't you know these boys when they were youngsters?

A. No, sir. When I came in this country they were up in the country, parish of St. Landry.

Q. When and where did you first make their acquaintance?

A. When and where I made my first acquaintance with him, Mr. Fabacher?

Q. With his sons.

A. The first acquaintance I made with them was when they kept—the first I ever knew the boys was on Gravier street between Tchoupitoulas and Magazine.

Q. When was that?

A. I suppose that was about 12 or 13 years ago; something like that; I am not sure. I just calculate by the year. I never interfered with those people. We never had anything to do with one another or bothered about one another.

Q. Did you ever visit Mr. Fabacher at his residence on Calhoun street?

A. I don't know whether he had a residence there or not on Calhoun street. I know we buried him out there, but I don't know whether it was his house or not.

Q. Were you ever there before his funeral?

A. No, sir.

606 Q. You were there at the funeral?

A. I was there at the funeral and was here the night of the wake.

Q. That is always the night before the funeral?

A. Yes; when he was laid out.
Q. Where did the funeral go from his residence?
A. From the residence and went down to the Jesuits' church.
Q. And from there?
A. Out to St. Joseph's graveyard, to his tomb.
Q. St. Joseph No. 2?
A. No. 3—no; No. 1.
Q. He was buried there in his family tomb?
A. Yes, sir.
Q. You were not accustomed to visit his family?
A. Who?
Q. I say you were not accustomed to visit his family.
A. No, sir; not at all.
Q. You only met him at the restaurant?
A. Very seldom at the restaurant, because I go there but very seldom. My business don't call me to be in the restaurants at all. I go down and do my business and go home. I met him at Hufft's, I told you before, maybe once or twice in a year or in two years.
Q. Do you know Mrs. Thorman?
A. Mrs. who?
Q. Mrs. Antoinetta Thorman, born Fabacher.
A. I know Fabacher, but the name Thorman I don't know her. I don't know her husband and I don't know her husband's name.
Q. Did you know her first husband, Troy?
A. I knew him—no; excuse me for one second; I know
607 the name. I did see him once or twice.
Q. Did you see his funeral notice in the newspapers?
A. Mr. Fabacher?
Q. Yes.
A. I did.
Q. Which paper did you see it in?
A. In the German paper.
Q. Was that the reason you went to his funeral?
A. I read the German paper. No, sir; I went to the funeral because he was my uncle. I thought I was entitled to go to the funeral.
Q. Isn't the invitation always extended to the friends and acquaintances in funeral notices?
A. Yes, sir.
Q. What emanates from the family?
A. I don't understand that question you ask me.
Q. This funeral notice from the family?
A. Yes, sir; from the family.
Q. Asking everybody to come to their relative's funeral, the deceased's funeral, the dead man's funeral?
A. Yes, sir.
Q. Do you remember what was said by any one just after the coffin was closed?
A. What do you mean by that?
Q. Well, I mean just exactly what I say.
A. What was said?
Q. Yes.

A. There were prayers said there. If you want me to tell you what prayers were said, that I couldn't tell you that.

Q. Didn't Mr. Lawrence Fabacher —, "Father, I forgive you," and didn't the balance of the brothers and sisters repeat it and say, "Wee all forgive you"?

608 A. I think it was nothing out of the way. I think it was nothing more than nice.

Q. Did they say so?

A. I don't deny that they did, sir. They said, "Let us all forgive him, like a good child would do to his father and mother when they are dead—to forgive them before they are gone."

Q. Isn't it generally the other way, that we ask the forgiveness of the dead and not extend to them our forgiveness?

A. I think it is a nice — for the children to forgive their father. I don't think there is any harm in that. I think it was right for them to do that; that they should go up and say that they forgive him. I think it was very nice.

Q. I ask you if it was not usually the other way.

A. I don't see any other way.

Q. Don't the living ask the forgiveness of the dead?

A. I don't see any other way.

Q. And not to extend their forgiveness?

A. I don't see anything else than a good heart in that; that's all I see.

Q. I am not asking you your opinion about it, my dear sir. I am asking you a question.

A. And I answer you the question. I can't do any more. I think it is no more than right for any child that loves his father—for everybody to forgive him when he becomes a dead person.

Q. Who was Mr. Joseph Fabacher's agent here in the city of New Orleans?

A. Who was Mr. Joseph Fabacher's what?

Q. Agent, representative.

A. Representative? I couldn't tell you that. I don't know. I never bothered about their business.

Q. Whom did he put his confidence in and trust to attend to his affairs here?

609 A. I don't know; I don't think he trusted anybody but himself; I couldn't tell you.

GEORGE WEGMANN.

Sworn to and subscribed before me this 18th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

PETER WEGMANN, Esq., a witness produced, sworn, and examined on behalf of proponents, deposes and says:

Direct examination by Mr. BUCK:

Q. Mr. Wegmann, your name is Peter Wegmann?

A. My name is Peter Wegmann.

Q. You are a brother of Mr. George Wegmann, who was here a moment ago?

A. Yes, sir.

Q. Of course you knew the late Joseph Fabacher, then?

A. I knew Joseph Fabacher.

Q. Are you older or younger than your brother?

A. I am the oldest one.

Q. Do you know anything about Mr. Fabacher's age and residence in the last few years of his life?

A. Yes, sir.

Q. State what you know about it from himself and from general facts within your knowledge.

A. I don't know how long it is, but it was about a few days before the old man was sick. We were down on business and I passed by Mr. Fritz Hufft's, and old man Fabacher came in and we asked him to take a drink and he refused to drink. He said he had a drink at the bar and he wouldn't drink, and he sat down. There was good deal of people around, but one after the other dropped out, and I asked him, I says, "Uncle"—he was my uncle—I says, "when are you going to leave the city?" He says he thinks if a few weeks that he would leave the city, and he says, "I
610 am going to leave here and I will never come back any more." Says he, "I am going to stay up in Waukesha in my home that I have made there." I said, "Well, Uncle, you won't do that. You have got all your children down here, and boys." I said, "You wouldn't do that." He says, "I am going up to stay," and he says, "You haven't got any idea how I am fixed up there." He said, "I built a house for me to live and die." He says, "I fixed it. I have got water all over the house, bath rooms all around," and he says, "I just built it according to comfort for me and my family," and he says, "I have got two or three houses up there. I have got a livery stable; last year I put it in the house, and the man that attended to it that I paid, sometimes he would feed the horses and sometimes not, and it cost me just as much as this time when I put it in the livery stable, and when I go up there everything is all right," he says, and he says, "It is the nicest country you ever saw; they have everything growing, rich country," and he was going to stay there; he was never coming back to New Orleans any more; that's what he told me; that was a few days or a day or two before he got sick. I didn't know anything about his getting sick until they told me that he was operated upon; they told me that day.

Q. Who was present at that conversation besides yourself?

A. Well, now, there was my brother there; there was a few other people there, but we asked him to take a drink and he refused, and I think some of them got up, and I just accidentally——

Q. Had this conversation with him?

A. Because me and my uncle we were not big friends; me and him had some difficulty about business. I bought a grocery store from him before; that was in the long, long years ago, and we had some settlements to make. I went up in the country with
611 him and Mr. Hoover, and I came back again, and I bought a store from him and came down to New Orleans, and we

had settlements made between me and him, and I refused to pay him rent. I was paying him $75.00 rent, and I told his agent that — wouldn't pay the rent any more until he would give me my money. When he came down it was all right. I owed him $300.00, and when he came down we couldn't come to no agreement, and he had gone off, and he wanted to make me move, and he wanted to make me move out of the house, and he went down to Lawyer Wenck to give me notice to move. I asked a friend and neighbor——

Q. In other words, you were not very good friends?

A. No, sir.

Q. Mr. Fabacher was a very strict business man?

A. Oh, he was a hard man; the only thing I got ahead of him, and he couldn't make me move because I offered the money to his agent.

Q. You beat him?

A. Yes, sir.

Q. Well, all of this, you made friends again?

A. We were always in the family, and when he came again we were talking together. If I asked him anything he would tell me. If I didn't he wouldn't.

Q. Have you heard anything of his moving away from here before this conversation of which you speak?

A. No, sir; I never heard anything about it.

Q. Did you know that he had sold his property?

A. I never knew anything about it. I only saw it in the paper that it was sold at auction.

612 Q. You didn't meet him very often?

A. No; very, very seldom. I met him when he came from the country, on Canal street, on the corner of Canal and Royal. I says, "Hello, Uncle," and we shook hands together. He says, "I have just come. I wouldn't come down, but they were bothering me to come down, and I won't come down any more." That's what he told me a day or two before he got down sick. I met him on the open street.

Q. Who was he speaking of when he said "they were bothering him to come down"?

A. He said his wife bothered him; that she wants to come down here again on account of the boys, but that he didn't want to come down. He says he has got such a nice home that he didn't care to come down. That's what he told me on Canal street, on the banquette.

Q. This conversation in Hufft's—who is Fritz Hufft? What business is he in?

A. He kept a saloon on Royal street, near Canal.

Q. And at that this conversation took place?

A. Yes, sir; that was at the table. We were sitting down at the table, and I invited him to take a drink, and he refused to do so.

Q. Was anything said in that place about some relatives in Germany?

A. He told us he had received a letter from his brother, the only brother he had living. The balance were all dead.

Q. Did he show you the letter?

A. No; he didn't show it to me, but he says that he wants his brother to come here to live up there with him, and he might live many, many years longer, but the old man was too old. He wrote a letter out that his son-in-law or some relation would bring
613 him here and asked whether he would pay the way to come, and he told him that he would pay the way to come if he would bring him, because he couldn't come by himself.

Q. That is the last time you saw him?

A. That is the last time I saw him. I saw him when he was lying in bed, but I never spoke to him any more.

Cross examination by Mr. McCaleb:

Q. What did he say about dying and being buried that day?

A. What?

Q. What did the old man say about dying and being buried?

A. I never seen him; I saw his corpse.

Q. I say what did he say that day you met him at Fritz Hufft's about dying and being buried?

A. Never told me anything about that.

Q. You never heard anything of that kind?

A. No, sir.

Q. If he had said anything of that kind you would have heard it?

A. No, sir; I don't know whether he said it; I didn't hear it.

Q. You never heard anything of the kind?

A. No, sir.

Q. Did you know his first wife?

A. Yes, sir.

Q. Did you know his children by his first wife?

A. Yes, sir; yes, sir.

Q. Do you know where she is living now?

A. No, sir.

Q. When did he marry his last wife?

A. I can't tell you, sir.

Q. How old is his eldest child by his last wife?

A. By his last wife? That I couldn't tell you that. It ain't
614 possible for me to tell you that, because the time of the year passes that quick that I couldn't hold anything in my head of that kind, although I am acquainted with the family; I couldn't hold that in my head.

Q. You can't tell about the ages of his children?

A. What?

Q. You can't tell about the ages of his children?

A. The uses of the children?

Q. The ages—ages; how old they are?

A. No, sir; I could guess, but I couldn't tell you about the ages, because time passes so quick that I don't remember.

Q. How old is Mr. Lawrence Fabacher?

A. Well, now, that is a hard thing for me to tell. I think that Lawrence might have been around between 25 and 30; I don't know, to tell you the truth. I don't know his children'- ages. I have been acquainted with the family for many years, but the children overgrowed me, and even when they were in business I didn't know them, only the eldest that was up in the country.

Q. When did you first get acquainted with them?

A. I first got acquainted with the old man in Europe.

Q. When did you first get acquainted with his children?

A. In 1864.

Q. Did you know *Nr.* Lawrence in 1864?

A. Sir?

Q. Did you know M*t.* Lawrence in 1864?

A. I don't think he was born; I don't think he was born.

Q. Well, about what time did you first know him?

A. Well, now, I came here in 1864, and I couldn't tell you when the children were born.

Q. What business are you engaged in?

A. The grocery business.

615 Q. Bar-room?

A. Bar-room and grocery.

Q. Where?

A. Corner of St. Thomas and Felicity.

Q. Did Mr. Lawrence speak to you about giving your testimony in this case?

A. No, sir.

Q. Who did?

A. Nobody else.

Q. No one spoke to you?

A. No, sir; and I never hardly cross Mr. Lawrence Fabacher sometimes in eight or nine months. I never met them in his house.

Q. Who told you that you were wanted here as a witness?

A. I got notice from Mr. Buck.

By Mr. BUCK:

Q. You say you don't remember in that conversation anything about Mr. Fabacher saying about dying. Do you remember that he said anything about where he wanted to — buried?

A. No, sir; never did tell me anything about that; never heard anything of it.

PETER WEGMANN.

Sworn to and subscribed before me this 18th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

JOHN MALONE, Esq., a witness produced, sworn, and examined on behalf of proponent, deposes and says:

Direct examination by Mr. BUCK:

Q. What is your business?

A. Contractor and painter, sir.

Q. How long have you been engaged in that business?

A. Well, for myself, seven years.

616 Q. About how many years?

A. Seven years the first of September.

Q. Do you know Mr. Joseph Fabacher, who died lately here?

A. Yes, sir.

Q. Do you know anything—where his residence or where he lived in the last few years of his life?

A. Well, I know where he lived for a good many years, in town here, and I know where he has told me he lived, where his residence was.

Q. Where did he live in town here?

A. Well, he lived on Prytania street, but the last couple of winters he has been living on Calhoun street.

Q. Did he ever tell you he was living in Waukesha, Wisconsin?

A. Well, he told me—last December I saw him—he told me that he was going away; he wasn't coming back any more, and I met him in the restaurant one day, a couple of days after he came back, and was talking to him, and I says, "Well, Uncle Joe, I see you are back again. I thought you were not coming back any more." "Well," he says, "I am back again. I had to come back on account of the old lady." He says, "She wouldn't stay there this winter with me." I says, "You ought to have come back and voted here," and he says, "I don't vote here any more; I am a citizen of Wisconsin." That was right after he came back.

Q. And he told you that when he would go back he would not come back any more?

A. Well, he told me that. I suppose it was four or five years ago, when his son was building some houses here in town, and he told me he was going to sell all his property and was going to live in Wisconsin for the balance of his life and in Waukesha; that he wouldn't live here any more; told me that one day on the buildings; I met him there.

617 Cross-examination by Mr. McCaleb:

Q. That was, you say, several years ago that he told you that he was going to sell out her- and go to live there permanently?

A. Yes, sir.

Q. Four or five years ago?

A. I am not sure about the number of years; I know it was somewhere in that neighborhood.

Q. Who asked you to come here to testify here today?

A. Well, nobody asked me. Mr. Fabacher's brother asked me the other day if the old gentleman had ever spoke to me about his home in Waukesha.

Q. Which brother?

A. Peter. I told him yes. I had several conversations with him, Jos. Fabacher; every time I would meet him I would stay down and have a talk with him at the restaurant.

JOHN MALONE.

Sworn to and subscribed before me this 19th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

JOSEPH B. TAYLOR, Esq., a witness produced, sworn, and examined on behalf of proponents, deposes and says:

Direct examination by Mr. BUCK:

Q. You are a resident of this city?

A. Yes, sir.

Q. You were born here and lived here all your lifetime?

A. Lived here nearly all my life.

Q. About — aged man are you?

A. Fifty-four.

Q. Did you know the late Mr. Fabacher?

A. Certainly. You mean Mr. Joseph Fabacher?

618 Q. Joseph Fabacher, who died recently here.

A. Yes, sir.

Q. You are a notary public by profession?

A. Yes, sir.

Q. Do you know anything with reference to Mr. Fabacher's last residence two years before his death?

A. I understood that he was living in Waukesha.

Q. Do you know where he lived here, on Prytanic street, corner of Aline?

A. Yes, sir.

Q. Do you know that he sold his properties about two or three years ago?

A. Well, I have seen some sales recorded; saw the advertisement.

Q. How did you get your knowledge as to his residence in Waukesha?

A. From his telling me so.

Q. When and where did he tell you so?

A. Here in the city, in the city of New Orleans.

Q. Have various conversations?

A. Well, in two or three conversations.

Q. Will you state, as nearly as you can, exactly what he did say to you?

By Mr. McCALEB:

Q. And when?

By Mr. BUCK:

Q. And when.

A. About the time he was selling his property, when it was advertised at public auction, I asked him why he was selling out. He sais that he intended to live in Waukesha; that his health was always good there and it was not good here.

619 Q. Did you know whether he was in any business on his own account within the last few years in this city?

A. Not that I know of.

Q. You know the restaurant which he had established at the corner of Royal and Custom-house was carried on by whom for the last two or three years?

A. For two or three years by Mr. Lawrence Fabacher.

Q. Do you know, as a matter of fact, that the old gentleman was connected with the business?

A. I never heard him say so, and from what knowledge I derived from my transactions with Mr. Lawrence Fabacher——

By Mr. McCaleb:

Q. Never mind about that.

By Mr. Buck:

Q. When did you have your last conversation, or, rather, when did he speak to you last on the subject of his residence in Waukesha?

A. About a week before he died.

Q. In this city?

A. Yes, sir; in this city.

Q. Relate the particulars of that conversation and when and where.

A. I was taking a lunch in Mr. Fabacher's restaurant—at least I went in to see Mr. Lawrence Fabacher and they were taking lunch and he invited me to take lunch with him.

Q. In the restaurant?

A. On Royal street.

Q. What did he say to you at that time—what was the conversation?

A. Well, there was very little conversation in regard to that, excepting that he said that he didn't feel well, and that he never felt well when he was here; that he always felt better in Waukesha.

Q. And this conversation was in the month of February, I presume?

A. Well, it was about a week before he died. I was astonished to know that he was dead, because I had seen him and been with him such a short time before.

620 Q. Did he say anything at that time about returning to Waukesha?

A. No, sir.

Q. Simply said he was not feeling well when he was here?

A. That he did not feel well.

Q. Was it not generally known among his friends that he was living in Waukesha?

Objected to by counsel for contestant.

A. I don't know that, Mr. Buck. I don't think I ever spoke to anybody about it but him personally or ever heard anybody speak about it.

Cross-examination by Mr. McCaleb:

Q. Who held his power of attorney here?

A. I don't know. I didn't do business for Mr. Jos. Fabacher.

Q. Who managed his affairs here for him?

A. I think Mr. Wenck attended to all his business here, sir.

Q. You were the notary of Mr. Lawrence Fabacher?

A. Yes, sir—that is to say, I had a great deal of business for him. I expect he might have somebody else or did business with other people.

Q. Did he speak to you about the testimony—that he wanted you to testify in this case?

A. How's that?

Q. Did he speak to you or tell you that he wanted you to testify in this case?

A. He asked me if I wouldn't testify if I was called.

By Mr. BUCK:

Q. What kind of a man was Mr. Fabacher in regard to business judgment and general disposition; was he a man that was able to make up his own mind about anything?

A. I regarded him as a man who didn't like anybody to influence or control him much. He had his own way about things.

621 By Mr. MCCALEB:

Q. What was the condition of his hearing?

A. Well, I believe he had some little impediment, but I don't think it amounted to much.

Q. Did you know much of him during the two or three years prior to his death?

A. Only when I would meet him by chance.

Q. Casually?

A. Casually. When I met him at all it was almost always in the restaurant of Mr. Lawrence Fabacher, when I might chance to go in there.

J. D. TAYLOR.

Sworn to and subscribed before me this 15th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

HENRY D. HART, Esq., a witness produced, sworn, and examined on behalf of proponents, deposes and says:

Direct examination by Mr. BUCK:

Q. You are a resident of New Orleans?

A. Yes, sir.

Q. Been living here all your life, I believe?

A. Well, I except when I am traveling around once in a while.

Q. What is your business?

A. I am executor for the estate of S. J. James, brother-in-law of S. L. James, and that business is lessee for the Louisiana State penitentiary and contracting, plantation work, one way or another.

Q. You lived in this city, in what we call the sixth district, in the neighborhood of Joseph Fabacher, did you?

A. Next dood to them, sir.

Q. On Prytania and Aline street?

622 A. No, sir; on Aline street between Prytania and St. Charles.

Q. That is next to where the late Joseph Fabacher used to live?

A. Yes, sir.

Q. You knew him well?

A. Knew him very well.

Q. He had a well-established home there, did he not?

A. Beautiful home.

Q. Do you remember and know of his selling out that home?

A. No, sir; I know nothing and I did see the advertisement in the paper. I believe it was put up for sale and not sold.

Q. You don't know whether it was afterwards sold or not?

A. I don't know anything about that; I had moved away in the meantime.

Q. Mr. Fabacher was not living there at the time os his death?

A. No, sir; he was living up near where I am living now. He was living near to me again.

Q. Do you know of his moving away to Waukesha?

A. Yes, sir; I met him in Chicago the year of the World's fair. His wife, I believe, little Jakey, and I believe this son here (pointing to Mr. Lawrence Fabacher) were with him, and I had a talk with him and he stated that he had built himself a nice home up there; his health was very much improved; that he was going to move everything up there. I was asking him about a little horse that Jakey had. He said, "I have brought him all the way up there." He says, "I am well fixed. It has improved my health." I saw that without asking.

Q. Is that the only conversation you ever had with him?

A. Afterwards, here in the city, he has repeated it once or twice. He also told my book-keeper the same thing.

By Mr. McCaleb:

Q. Never mind what he told your bock-keeper unless it was in your presence.

623 By Mr. Buck:

Q. Were you present when he told your book-keeper?

A. No, sir; I was not.

Q. But he spoke to you. What did he say?

A. That was in the hotel in Chicago during the World's fair.

Q. No; during his conversation here in the city. What did he tell you here in the city?

A. How's that?

Q. During his conversation here in the city what did he tell you here in the city?

A. Oh, well, the same thing and one thing and another. He said he was going back there again and one thing and another; had just come down.

Q. Did he say anything about his intention to live there permanently?

A. Oh, yes; he was going to live there; had built a house, a nice home, and his health was very much improved by it. I saw that without his telling me.

Q. He spoke to you about this matter in the spirit of a neighbor, having lived together?

A. It was merely and ordinary conversation; that's all; meeting him in the hotel and having a conversation with him.

Q. Where did he reside two years prior to his death in this city?

A. Well, I think from the way he spoke to me it was up around Waukesha some place.

Q. Do you know of his living on Calhoun street?

A. Well, he had a house there, but he spent the winters in—he would come and spend a little while here.

Q. He would come down in the fall and go away in the spring?

A. He had done it, I believe.

Q. Came down in the fall, 1895, and went away in the spring, 1896?

A. That I don't know; I merely saw him here; I saw
624 him a short time before his death, stating that he was going back there very soon.

Q. He was then living on Calhoun street?

A. Yes, sir; Calhoun street.

Q. He was buried from that place?

A. I believe he was. I was absent the day he was buried.

H. D. HART.

Sworn to and subscribed before me this 23rd day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

SIMON BLOCK, Esq., a witness produced, sworn, and examined on behalf of proponents, deposes and says:

Direct examination by Mr. DART:

Q. Did you know Joseph Fabacher?

A. Yes, sir.

Q. Very well?

A. Yes; knew him intimately; yes, sir.

Q. How many years about?

A. Oh; knew him before he went to Opelousas, and he kept a store in Opelousas and afterwards he came here.

Q. You knew him for a long number of years?

A. Oh, a long number of years; yes, sir.

Q. Do you know whether he went to live anywhere out of New Orleans in the last three or four years?

A. I met him in Waukesha.

Q. When?

A. That must have been three or four years ago. I think three years ago—three or four years ago.

Q. Did he say anything to you about being there?

A. Yes, sir.

Q. What did he say?

A. I asked him since when he was there. He says, "I live here." I says, "Yes." Well, of course, I knew him well, and my
625 wife was with me, and he spoke to us and said, "I am going out to get you at the hotel and show you the house," and he came with his carriage the second day after and took us out to his house and showed us around the house and told us it was his home now—future home.

Q. Future home?

A. Future home. That he felt better there, and he even tried to make me buy a lot next to him that I should come there. I said, "No; I reside in Chicago."

Q. Did he say anything about coming back to New Orleans?

A. Not New Orleans. He says he didn't care about coming to New Orleans. "The old woman," he says, "gets homesick for the children, and occasionally we go down." We spent several hours at the house. He showed us around and showed us the house, and we called on him again.

Q. Was the house well furnished?

A. Finely furnished; finely furnished house.

Q. Good house?

A. Good, new house. He even had inside shutters built, which he did not have finished then, and he showed me how he was going to furnish it finer. The house was finely furnished, but he was going to have inside shutters put in; finished finer.

Q. Was it a regular house?

A. Regular house, as they have in that country.

Q. I judge that—a house for winter and summer.

A. Yes, sir; all the time.

Q. Did you see him afterwards when he came to New Orleans on his trips?

A. Yes, sir.

Q. Say anything to him about Waukesha?

A. He told me he was going back as soon as I met him here. I generally go back to Chicago soon, but he says, "I leave sooner than you do." That's all.

626 Q. Did you go back to Waukesha?

A. No; not since.

Q. Since that time?

A. No; I haven't been to Waukesha since.

Q. He was fixed there in a home?

A. Yes; well fixed; as well as any man could wish to be—from the basement to the top of the house; the rooms and everything nicely fixed.

Q. In talking to you he talked to you — that was his house?

A. Yes, sir.

Q. Last place?

A. Yes, sir; that is his home. I don't know what the conversation was exactly, but he said that that was his home. He says, "I feel better" and "that's where he likes to stay."

Q. And he said he was going to stay there?

A. That's what he said.
Q. What is your business now?
A. I am out of business. I am planting in Louisiana.
Q. You used to be in the cotton business?
A. Yes, sir.
Q. How old are you?
A. 66.

Cross examination by Mr. McCaleb:

Q. Your daughter is married and lives in Chicago?
A. Yes, sir.
Q. And you go there—spend part of your time there—to be with her?
A. No; I am not with her now; I have got a home next to her.
Q. Next to her?
A. Next to her, which I expect to make a home.
Q. She is your only child?
A. Yes, sir.
Q. You are not a citizen of the United States, are you, Mr. Block?
627 A. No, sir; no, no.
Q. You are a citizen of the French Republic?
A. German.
Q. Subject of Germany?
A. Subject of Germany.
Q. This conversation that you had was three or four years ago, was it, in Chicago?
A. Yes, sir.
Q. You haven't seen much of him since?
A. I saw him here in New Orleans once to my knowledge.
Q. When did you last see him here in New Orleans?
A. I think it was about a year ago some time; I can't say when, exactly.
Q. You don't — when he came and when — went from here?
A. No.
Q. Nor how long he stayed here?
A. No.
Q. You never visited him here in the city?
A. Visited him here?
Q. Yes.
A. No; except I met him.
Q. At the restaurant?
A. I met him at the restaurant.

—— ——.

Sworn to and subscribed before me this — day of June, A. D. 1897.

—— ——.

STATE OF LOUISIANA, }
Parish of Orleans, } *ss:*

I, the undersigned notary, do hereby certify that the above and foregoing three pages of typewritten matter contain the testi-
628 mony of Mr. Simon Block given as stated in the caption hereof and the certificate hereto appended; that I have been unable to find Mr. Block in order to obtain his signature to this testimony, although I have made inquiry to ascertain his whereabouts, my best information being that he is somewhere in the country, planting. I further certify that I took the testimony of Mr. Block, as stated, having duly sworn him according to law; that the above and foregoing three pages of typewritten matter contain a true and faithful transcript of the shorthand notes taken by me of his testimony; that said shorthand notes were carefully and correctly taken by me, and this testimony is the testimony as given.

In faith whereof I have hereunto set my hand and seal this 6th July, 1897.

ARTHUR McGUIRK, *Not. Pub.* [SEAL.]

H. H. HODGSON, Esq., a witness produced, sworn, and examined on behalf of proponents, deposes and says:

Direct examination by Mr. BUCK:

Q. What is your business?
A. Real-estate business.
Q. You are the son and successor of W. I. Hodgson, I believe?
A. Yes, sir.
Q. He was in that business here many years?
A. Yes, sir.
Q. And you were a member of the firm before his death?
A. Yes, sir.
Q. Do you remember the late Joseph Fabacher?
A. Very well; yes, sir.
Q. You knew him very well?
A. Yes, sir.
Q. Did you or your father ever do any business for him in real estate?
629 A. Yes, sir; we sold some real estate for him and attended to the business for him for some years.
Q. When did you sell it for him?
A. As well as I can remember, it was about four years ago; three or four years ago.
Q. Did you sell it at private sale or at auction?
A. At auction, sir.
Q. Where was his real estate situated?
A. Well, the property that we had charge — was on the corner of Prytania and Foucher street-; not Foucher; next to it; Aline street.
Q. Was that his residence?
A. Yes, sir; he lived there opposite the Tuoro infirmary.

Q. And it was finally sold?

A. Yes, sir.

Q. Do you know or did he give any reasons or in his conversation make any statements to you or your father in your presence about why he was selling—what his intentions were in that regard?

A. Yes, sir.

Q. What were his intentions?

A. He stated that he was about to take up his residence in Milwaukee somewhere, I think Waukesha or Oconomowoc; some place there; that the climate did not agree with him here, and that he was about to change his residence and become a resident of the State of Michigan.

Q. Waukesha is in Wisconsin.

A. Wisconsin; yes; I mean Wisconsin.

Q. How often did he make that statement to you?

A. He was in the office several times. He was anxious to dispose of the property so that he could leave. He stated that he expected to dispose of all of his property here and make a permanent
630 residence in the North.

Q. Did he say anything about having a home or a house in Wisconsin?

A. Said that he had a residence building or had a residence already purchased in Milwaukee. I remember father stating that he would find it very congenial up there because they had both been there.

Q. Did you meet him any time after that here in the city or before his death?

A. I believe I saw him once. I am not positive; I can't say positively.

Q. And you don't remember any other conversation?

A. I remember that time at the office. Ever since then I don't remember of seeing him.

Q. He did state that he intended to leave permanently?

A. Yes, sir; he was selling out here to go there to live permanently; to make a residence in that State.

Cross-examination by Mr. McCaleb:

Q. Who bought that property on the corner of Prytania and Aline?

A. I believe one of the sons, sir. One of the sons purchased the property. I know he rented it. Which one was it, Mr. Lawrence; do you remember?

By Mr. Dart:

Q. Depend on your memory.

A. I don't remember which one of them bought it, but I remember I afterwards sold the property and made returns to them for it I believe it was a son-in-law got it. It was a son-in law bought it

By Mr. McCALEB:

Q. Mr. Broderick?

A. Yes, sir; that is correct. Mr. Broderick bought it, and I rented it for him and sent him the notes and lease and everything. He leased to Mr. Fisher, the saw-mill man.

HARRY H. HODGSON.

Sworn to and subscribed before me this 17th day of June, A. D. 1897.

[SEAL.] ARTHUR McGUIRK, *Not. Pub.*

631 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans.

I, Arthur McGuirk, a notary public in and for the parish of Orleans, duly commissioned, sworn, and qualified, do hereby certify that the above depositions of Henry Rice, Bernard McCloskey, Gen. Eugene May, Otto Thoman, Frank Pace, Jos. Schutten, Thomas Nicholson, Fritz Jahncke, Henry Wellman, Jeff. C. Wenck, R. A. Corbin, Christian Schopp, Henry Haller, George Wegmann, Peter Wegmann, John Malone, Jos. D. Taylor, Henry D. Hart, Simon Bloch, and H. H. Hodgson were taken by and before me, in the office of Messrs. Buck, Walshe & Buck, 3rd floor, Masonic Temple, in the city of New Orleans, in the parish and State aforesaid, on the 11th day of June, A. D. 1897, commencing at 3 o'clock p. m., and on the 14th day of June, A. D. 1897, commencing at 11 o'clock a. m.; that the said testimony was taken at the request of the proponent under the agreements and stipulations hereunto annexed and made part hereof; that the depositions were taken to be used in the matter of the last will and testament of Joseph Fabacher, deceased, now pending in the circuit court of Waukesha county, State of Wisconsin; that said depositions were taken in pursuance of the annexed agreements and stipulations; that E. Howard McCaleb, Esq., representing Messrs. Carney, Claussen & Walshe, attorneys for and on behalf of Antoinetta Thorman, contestant, and Messrs. Chas. F. Buck, Henry P. Dart, and Ryan & Merton were present on behalf of the proponent and attended the taking of the said depositions, except that Mr. Ryan, of Ryan & Merton, was not present on the 14th day of June, A. D. 1897; that said deponents were each, before examination, sworn to testify the truth, the whole truth, and nothing but the truth relative to said cause; that
632 said depositions were taken down by me, notary, in shorthand, were thereafter reduced to writing, and that said depositions *was* read carefully over by each said deponent and then subscribed by him.

In witness whereof I have hereto set my hand and affixed my official seal this 29th day of June, A. D. 1897.

ARTHUR McGUIRK, *Not. Pub.* [SEAL.]

633 In the Matter of Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

It is hereby stipulated by and between Messrs. Ryan & Merton, of Waukesha, Wisconsin, attorneys of record for the proponent in the above-entitled matter, and Messrs. Carney, Clasen & Walsh, of Waukesha, Wisconsin, attorneys of record for the contestant, Antoinetta Thorman, in the above-entitled matter, that said proponent may take the depositions of the witnesses hereinafter named at the city of New Orleans, Louisiana, before —— ——, notary public, at the offices of Messrs. Buck, Walshe & Buck, rooms 16 and 17, Masonic Temple building, in said city of New Orleans, Louisiana, at any time between this date, June 10, 1897, and June —, 1897, upon giving twenty-four hours' notice to E. Howard McCaleb, Esq., the attorney representing the firm of Carney, Clasen & Walsh, attorneys of record for the contestant in this matter:

Simon Block, # 2713 St. Charles Ave.
Eugene May, cor. Canal & Chartres Sts.
T. Fitzwilliam, # 324 Camp St. (stationer).
Jos. Shutten, J. & B. Shutten, on Poydras St.
Frank Pace, fruit stand on Canal Str.
Otto Thoman, Fireman's Insurance Co.
Henry Haller.
Bernard McCloskey.
H. D. Hart.
Peter Wegmann, 635 Felicity St.
George Wegman, corner Ninth & Chippewa.
Henry Wellman, Magazine & State St.
Peter Fabacher.
F. Jashuke.
Henry Rice.

634 It is further stipulated and agreed that said proponent may take the deposition or depositions of any other witness or witnesses in this matter other than herein named, at their option, between the dates above referred to, upon giving the names of said witness or witnesses proposed to be examined to said E. Howard McCaleb, Esq., at least twenty-four hours before the examination of said witness or witnesses, all of which is to be taken before the said notary public herein named.

RYAN & MERTON,
Attorneys for Proponent.
CARNEY, CLASEN & WALSH,
Per E. HOWARD McCALEB,
Attorneys for Contestant.

[Endorsed:] In county court, Waukesha county. In the matter of the estate of Jos. Fabacher, dec'd. Depositions. Filed in circuit court, Waukesha Co., W., Jan. 5, 1898. C. W. Fraser, clerk. Filed in probate court this 10th day of July, 1897. M. S. Griswold, Co. judge.

635 Circuit Court, Waukesha County.

In the Matter of the Last Will and Testament of JOSEPH FABACHER, Deceased, on Appeal of ANTOINETTE THORMAN, Contestant.

We, the jury duly empanneled and sworn in this action to try the issues of fact therein submitted to us on the following questions, do find, determine, and answer such questions as follows:

First question. Was the paper-writing presented for proof, allowance, and probate as the last will and testament of Joseph Fabacher, deceased, executed in conformity with the provisions of the statutes of this State relating to wills?

Answer. "Yes."

Second question. Was the said alleged last will and testament of said Joseph Fabacher, deceased, his own voluntary act and deed, or was it the result and product of undue influence?

Answer. "The said alleged last will and testament of said deceased was the said deceased's own voluntary act and deed.

Third question. Was the domicil of said Joseph Fabacher at the time of his death, the 3rd day of March, in the year 1897, at the city of Waukesha, county of Waukesha, State of Wisconsin, or was it at the city of New Orleans, State of Louisiana?

Answer. City of Waukesha, Waukesha Co., State of Wisconsin.

MORRIS A. PLACE, *Foreman.*

636 Answer. The domicil of said Joseph Fabacher, deceased, at the time of his death, the 3rd day of March, in the year 1897, was at the city of Waukesha, county of Waukesha, State of Wisconsin.

MORRIS A. PLACE, *Foreman.*

637 *Jury List.*

Circuit Court, Waukesha County.

Re Will of JOSEPH FABACHER, Deceased.

1. Julius B. Christoph, ex. by ct.
2. Frank Hood.
3. D. W. Powell.
4. C. M. Taylor, ex. by ct.
5. Joseph Ward, 1 proponent.
6. Alex. Caldwell, 3 contestant.
7. Morris Place.
8. George Peffer, 1 contestant.
9. Albert Alden, 2 proponent.
10. Fred. Phelps, 3 "
11. James Lyman.
12. Daniel Cusick, 2 contestant.
13. Joel L. Hoos.
14. James D. Grant.
15. J. E. Welch.
16. Owen Rowlands.

17. Michael Prendergast, ex. for sickness.
18. J. Hingen.
19. Thomas Henneberry.
20. Ed. Fenlon.

[Endorsed:] Circuit court, Waukesha Co. *In re* will of Jos. Fabacher, deceased. Jury list. Filed in circuit court, Waukesha Co., Wis., Jan. 5, 1898. C. W. Fraser, clerk.

638 STATE OF WISCONSIN:

In Circuit Court for Waukesha County.

At a general term of the circuit court in and for the county of Waukesha, in the State of Wisconsin, begun and held at the court-house, in the city and county of Waukesha and State of Wisconsin, on the 7th day of December, 1897, and on the 5th day of *of* January, A. D. 1898.

Present: The Hon. James J. Dick, circuit judge, presiding.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Findings of Fact & Conclusions of Law.

The above-entitled matter being now here at issue in said circuit court upon the appeal by Antoinette Thorman, contestant, from the order and determination of the county court of said county admitting said will to probate, and having now here duly come on for trial and hearing before this court and a jury, and said jury being empanneled at the request of the contestants herein, and the proponent appearing by Messrs. Ryan and Merton, his attorneys, and the contestant appearing by Messrs. Carney, Clasen & Walsh, her attorneys, and D. S. Tullar, Esq., as guardian *ad litem* for the minor children of said deceased interested in said matter, and the testimony on behalf of the respective parties having been taken in open court, and the court having submitted to the jury its special verdict, wherein the said jury found:

First. That the said proposed will of said Joseph Fabacher, deceased, was duly executed according to the laws of the State of Wisconsin.

639 Second. That said will was not procured by undue influence or fraud, but was made by the said testator freely and voluntarily and of his own free will; and

Third. That the said deceased at the time of his death was a resident and inhabitant of and that his domicil was at the city of Waukesha, county of Waukesha and State of Wisconsin.

And after said special verdict had so been entered of record in this court, and a motion having been duly made by the proponent of said will for judgment of this court admitting the same to probate, and a motion having been made by the contestant that probate thereof be denied, and the court having heard the arguments of re-

spective counsel and being fully advised in the matter and independent of said verdict, the court now here makes the following—

Findings of Fact and Conclusions of Law.

Facts.

1. That the said Joseph Fabacher, deceased, duly made and executed as and for his last will and testament the proposed will offered for probate, and did duly make, execute, and acknowledge the same to be his last will and testament on the 29th day of October, in the year 1896, at the city of Waukesha, county of Waukesha and State of Wisconsin.

2. That said deceased so executed said will of his own free will and accord, without any influence being brought to bear upon him whatever, and that he was not under undue influence at the time of the making and subscribing of said will, and that in the execution of said will said testator duly complied with all the requirements of the statutes of the State of Wisconsin.

3. That at the time of the making of said will and at the time of the death of said deceased he, said Joseph Fabacher, was a resident and inhabitant and his domicil was at the city of Waukesha, in the county of Waukesha and State of Wisconsin.

640 That on the 20th day of June, A. D. 1895, said testator, Joseph Fabacher, in his lifetime duly acquired a domicil and residence in and then and there became an inhabitant of Waukesha, in Waukesha county and State of Wisconsin; that such residence and domicile of said Joseph Fabacher, at Waukesha, in Waukesha county, Wisconsin, continued uninterruptedly from said 20th day of June, A. D. 1895, down to and including the 3rd day of March, A. D. 1897, the date of his death.

4. That at and prior to the making and execution of said last will and testament of said Joseph Fabacher, deceased, he was of sound mind and memory and competent to make a will.

5. That at and prior to the making of said will so proposed for probate, and on the 30th day of September, A. D. 1895, said testator, Joseph Fabacher, in his lifetime and while so domiciled at Waukesha, Wisconsin, was duly and legally married at the city of Milwaukee, in Milwaukee county and State of Wisconsin, to one Magdalena Frey, who survives him as his widow; that the issue of said Joseph Fabacher and Magdalena Frey is eleven children, viz:

Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Anthony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick, *née* Fabacher, Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, all of whom were born prior to said marriage of September 30th, 1895, and all of whom were by their said father, Joseph Fabacher, in his lifetime and subsequently to said marriage duly and severally recognized by him as his children and offspring, and that all of said children were at the time of his death and now are heirs-at-law of said Joseph Fabacher, deceased.

6. That the contestant herein, Antoinette Thorman, is a child and heir-at-law of said Joseph Fabacher, deceased, by a former marriage.

That in said will so propounded for probate the said testator did not mention his son Lawrence Fabacher as a beneficiary or
641 legatee, nor did he mention the said daughter, Antoinette Thorman, but that said omission was not by a mistake or inadvertence on the part of said testator; and from the foregoing facts the court now here announces the following—

Conclusions of Law.

I. That the domicil of said testa-or, Joseph Fabacher, at the time of his death, on March 3rd, A. D. 1897, was at the city of Waukesha, in the county of Waukesha and State of Wisconsin.

II. That said testator, Joseph Fabacher, left him surviving his widow, Magdalena Fabacher, and twelve children, viz., Antoinette Thorman (*née* Fabacher), Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Anthony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick (*née* Fabacher), Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, his next of kin and heirs-at-law, all of whom are of full age except the children, Magdalena Fabacher and Jacob Fabacher, and that all of said children are the legitimate and duly legitimatized children of said Joseph Fabacher, deceased, under and by virtue of the laws of the State of Wisconsin.

III. That the said will of said Joseph Fabacher, deceased, so offered for probate is entitled to probate in the county of Waukesha and State of Wisconsin as the last will and testament of said Joseph Fabacher, deceased, and the same hereby is admitted to probate as the last will and testament of said deceased.

IV. That judgment should be entered by this court admitting to probate the will of said Joseph Fabacher, deceased, and affirming the judgment of the county court admitting the same to probate, and that the records and proceedings herein should be transmitted to the county court for Waukesha county for further proceed-
642 ings, according to law, and that the proponents' costs and attorney's fees and the fees of the guardian *ad litem* in the circuit court should be paid out of the estate of said deceased.

Let judgment be entered in accordance with these findings.

By the court:

JAMES J. DICK,
Circuit Judge.

[Endorsed:] Original. Circuit court, Waukesha county. In — last will and testament of Joseph Fabacher, deceased. Findings of fact and conclusions of law. D. S. Tullar, attorney for minors, rooms 2, 3, and 4 Putney block, Waukesha, Wis. Filed in circuit court Waukesha Co., Wis., Jan. 25, 1898. C. W. Fraser, clerk. Vol. 19 *pp.* 220.

643 STATE OF WISCONSIN:

In Circuit Court for Waukesha County.

At a general term of the circuit court in and for the county of Waukesha, in the State of Wisconsin, begun and held at the courthouse, in the city and county of Waukesha and State of Wisconsin, on the 7th day of December, 1897, and on the 5th day of January, A. D. 1898.

Present: Hon. James J. Dick, circuit judge, presiding.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Judgment.

The above-entitled matter being at issue and having been duly placed upon the calendar of said court for trial at this term and having been duly reached in its order and being now here in said circuit court upon the appeal of Antoinette Thorman, contestant, from the order and determination of the county court of Waukesha county admitting said will to probate, and having now here duly come on for trial and hearing before this court and a jury, the proponent of said will duly appearing by Messrs. Ryan and Merton, his attorneys, and the contestant, Antoinette Thorman, appearing by Messrs. Carney, Clasen and Walsh, her attorneys, D. S. Tullar, Esq., appearing as guardian of the minor children of said deceased interested in said matter, and said matter having been in all things duly tried, and the court having heard all the testimony and having received the verdict of the jury, and the matter having been duly argued before the court by the respective counsel of the parties, and the court having this day duly filed its findings of fact and conclusions of law herein:

Now, therefore, on motion of Messrs. Ryan & Merton, at-
644 torneys for the proponent, and of D. S. Tullar, Esq., guardian *ad litem* for the minors interested, it is hereby—

Ordered, adjudged, and decreed that the said Joseph Fabacher, deceased, duly made and executed as and for his last will and testament the proposed will offered for probate and did duly make, execute, and publish the same as his last will and testament on the 29th day of October, in the year 1896, at the city of Waukesha, county of Waukesha and State of Wisconsin; that said deceased so executed said will of his own free will and accord, without any influence being brought to bear upon him whatever, and that he was not under undue influence at the time of the making and subscribing of said will, and that in the execution of said will said testator duly complied with all the requirements of the statutes of the State of Wisconsin.

It is further ordered, adjudged, and decreed that at the time of the making of said will and at the time of the death of said deceased he, said Joseph Fabacher, was a resident and inhabitant and his domicile was at the city of Waukesha, in the county of Waukesha and State of Wisconsin; that on the 20th day of June, A. D. 1895,

said testator, Joseph Fabacher, in his lifetime, duly acquired a domicile and residence in and then and there became an inhabitant of Waukesha, in Waukesha county and State of Wisconsin; that said residence and domicile of said Joseph Fabacher at Waukesha, in Waukesha county, Wisconsin, continued uninterruptedly from said 20th day of June, 1895, down to and including the 3rd day of March, A. D. 1897, the date of his death.

It is further ordered, adjudged, and decreed that at and prior to the making of said will so proposed for probate and on the 30th day of September, A. D. 1895, said testator, Joseph Fabacher, in his lifetime and while so domiciled at Waukesha, Wisconsin, was duly and legally married at the city of Milwaukee, in Milwaukee
645 county and State of Wisconsin, to one Magdalena Frey, who survives him as his widow; that the issue of said Joseph Fabacher and Magdalena Frey is eleven children, namely, Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Antony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick, *née* Fabacher; Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, all of whom were born prior to said marriage of September 30th, 1895, and all of whom were by their said father, Joseph Fabacher, and subsequently to said marriage, duly and severall- recognized by him as his children and offspring, and that all of said children were at the time of the death and now are the heirs-at-law of said Joseph Fabacher, deceased; that the contestant herein, Antoinette Thorman, is a child and heir-at-law of said Joseph Fabacher, deceased, by a former marriage; that in said will so propounded for probate the said testator did not mention his son Lawrence Fabacher as a beneficiary of legatee, nor did he mention the said daughter, Antoinette Thorman, but that said omission was not by reason of an inadvertance or mistake on the part of said testator.

It is further ordered, adjudged, and decreed that the domicile of said testator, Joseph Fabacher, at the time of his death, on March 3rd, A. D. 1897, was at the city of Waukesha, in the county of Waukesha and State of Wisconsin; that said testa-or, Joseph Fabacher, left him surviving his widow, Magdalena Fabacher, and twelve children, namely, Antoinette Thorman, *née* Fabacher; Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Antony Fabacher, Louis Fabacher, John J. Fabacher, Barbara Broderick, *née* Fabacher; Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, his next of kin and heirs at-law, all of whom are of full age, except the c-ildren Magdalena Fabacher and Jacob Fabacher, who are minors, and that all of said children are the legitimate and duly legitimatized children of said Joseph Fabacher, deceased, under and by virtue of the laws of the State of Wisconsin.

646 It is further ordered, adjudged, and decreed that the said last will and testament of said Joseph Fabacher, deceased, so offered for probate is entitled to probate in the county of Waukesha and State of Wisconsin as the last will and testament of said Joseph Fabacher, deceased, and the same is hereby admitted to probate as and for the last will and testament of said deceased.

It is further ordered, adjudged, and decreed that the judgment of the county court of Waukesha county, admitting said proposed will to probate as the last will and testament of Joseph Fabacher, deceased, be, and the same hereby is, in all things affirmed, and said last will and testament hereby is admitted to probate in Waukesha county, Wisconsin, as the last will and testament of said Joseph Fabacher, deceased.

It is further ordered, adjudged, and decreed that the record in this case be transmitted to the county court for Waukesha county, Wisconsin, for further proceedings according to law.

And it is further ordered, adjudged, and decreed that the costs of the proponent herein, together with his attorneys' fees and the fees of the guardian *ad litem* for said minors in the trial of said action in this court, be paid out of the estate of said Joseph Fabacher, deceased, and that the costs and disbursements be taxed by the clerk in this action, amounting to the sum of two hundred forty-three and $\frac{25}{100}$ dollars.

Dated this 25th day of January, 1898.

By the court:

JAMES J. DICK,
Circuit Judge.

[Endorsed:] Original. Circuit court, Waukeska county. *Re* last will and testament *plaintiff* of Joseph Fabacher, deceased, *defendant.* Judgment. Ryan and Merton, att'ys for proponent. Filed in circuit, court Waukesha Co., Wis., Jan. 25, 1898. C. W. Fraser, clerk. Vol. 19, *pp.* 225.

647 STATE OF WISCONSIN:

In Circuit Court, Waukesha County.

In the Matter of the Last Will and Testament of JOSEPH FABACHER, Deceased.

The order to show cause why copies of the judgment-roll in the above-entitled matter should not be sent to the supreme court in pursuance of the notice of appeal served by the contestant herein in lieu of the original record and why the original record should not be remanded to the county court for further proceedings according to law and that said estate should be proceeded with for settlement coming on to be heard at this time pursuant to the order to show cause herein issued and served on the 30th day of April, A. D. 1898, and due proof of such service upon Messrs. Carney, Clasen & Walsh, attorneys for the contestant herein, having been made, and said motion being based upon all the records and proceedings had in said matter, and it appearing to the court that notice of appeal and an undertaking thereon for costs of said appeal in the sum of two hundred and fifty dollars having been duly given and served herein on the 7th day of March, A. D. 1898, and Messrs. Ryan & Merton appearing on the part of the proponent of said will and D. S. Tullar, Esq., guardian *ad litem* for the minors

interested in said matter, also appearing, and Carney, Clasen & Walsh appearing in opposition, and the court being fully advised in said matter—

Now, therefore, it is hereby ordered and adjudged and the court does hereby order and direct the clerk of this court to send copies of the judgment-roll in this action to the supreme court of this State, in pursuance of said notice of appeal, in lieu of the original.

648 And it is further ordered that all the records in this case be remitted and returned to the county court for Waukesha county for further proceedings as provided by law.

Dated this 31st day of April, A. D. 1898.

By the court:

JAMES J. DICK,
Circuit Judge.

[Endorsed:] Original. Circuit court, Waukesha county. *Re* last will & testament *plaintiff* of Joseph Fabacher, dec'd, *defendant*. Order. Ryan and Merton, att'ys for proponent. Filed in circuit court, Waukesha Co., Wis., May 3, 1898. C. W. Fraser, clerk. Vol. 19, pp. 228.

649 Circuit Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

To Carney, Clasen & Walsh, attorneys for contestants:

Please take notice that the judgment affirming the judgment of the county court in said matter in all things was entered in the above-entitled action in favor of the proponents and against the contestant in the office of the clerk of the circuit court, county of Waukesha, on the 25th day of January, A. D. 1898.

Yours, etc., RYAN & MERTON,
Attorneys for Proponents.

[Endorsed:] Original. Circuit court, Waukesha county. In — last will and testament of Joseph Fabacher, deceased. Notice of entry of judgment. Due service of within admitted January 27, 1898. Carney, Clasen & Walsh, att'ys for contestant. Filed in circuit court, Waukasha Co., Wis., Jan. 27, 1898. C. W. Fraser, clerk.

650 STATE OF WISCONSIN:

Circuit Court, Waukesha County.

Re Last Will of *against* JOSEPH FABACHER, Deceased.

WAUKESHA COUNTY, *ss:*

I, C. W. Fraser, clerk of circuit court in and for the county of Waukesha and State of Wisconsin, do hereby certify that the foregoing copy is a true and correct transcript of the whole and every

part of all entries, orders, and minutes in the books of the clerk in the above-entitled action, and that the — hereunto annexed are the originals and all the papers filed in the above-entitled action, and that the same are here transmitted to the probate court of Waukesha Co. pursuant to order remitting same to the aforesaid court.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at Waukesha, this 24 day of May, A. D. 1898.

Seal Circuit Court.

C. W. FRASER,
Clerk of the Circuit Court, Waukesha County, Wisconsin.

[Endorsed:] State of Wisconsin. Circuit court, Waukesha county. *Re* last will and testament of *against* Joseph Fabacher. Remittitur to probate court. Return to Waukesha county court. Received from clerk of circuit court and filed in county court May 25, 1898. M. S. Griswold, Co. judge.

651 *Re* of Last Will and Testament of JOSEPH FABACHER, Deceased, on Appeal of ANTOINETTE THORMAN, Contestant.

It appearing to the court now here that a sufficient number of jurors drawn and summoned on the regular panel cannot be obtained fro the trial of the case now pending before the court, for the reason that one jury is out in the jury-room considering a verdict and others excused, it is therefore hereby ordered that the sheriff forthwith cause three persons qualified to serve as jurors to be returned into this court to serve as jurors at this time from the county at large for the trial of the case now pending before the court.

Dated at Waukesha this — day of Jan., 1898.

JAMES J. DICK,
Circuit Judge.

[Endorsed:] In circuit court, Waukesha county. In the matter of the last will and testament of Joseph Fabacher, dec'd. Order for jurors.

652 *Order.*

STATE OF WISCONSIN:

In Circuit Court for Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

The above-entitled matter on the contest of the will of Joseph Fabacher, deceased, having been duly tried and determined, and the legatees and devisees in said will and A. J. Frame, executor and proponent of the same, appearing by Messrs. Ryan & Merton, their attorneys, and D. S. Tullar, Esq., appearing for the minor children of said deceased for the proving and admitting of said will to probate, and the court having filed its findings of fact and conclusions of law herein and entered its judgment herein admitting said will to probate, and being duly informed as to the amount of compensa-

tion that should be allowed in this court for the attorneys for the proponent, A. J. Frame, and for the guardian *ad litem* in said contest in this court and independent of any and all proceedings in the county court, and being fully advised in said matter—

Now, therefore, the court does hereby order that out of the estate of Joseph Fabacher, deceased, said executor pay to Messrs. Ryan & Merton, attorneys for the proponent, for their services in this court in the contest of said will the sum of forty-five hundred dollars.

It is further ordered that said executor pay out of said estate to D. S. Tullar, Esq., the guardian *ad litem* for the minor children of said deceased, for his services in this court in the contest of said will the sum of five hundred dollars, and that the amounts so fixed for said respective attorneys is a reasonable amount for their said services in this court, and that said amounts be paid
653 without delay by the executor of the last will and testament of Joseph Fabacher, deceased.

It is further ordered that no sums be paid to the attorneys for the contestant herein.

By the court: JAMES J. DICK,
Circuit Judge.

[Endorsed:] Original. Circuit court, Waukesha county. *In re* last will and testament of Joseph Fabacher, deceased. Order for att'ys' fees, &c. D. S. Tullar, attorney for minors, room- 2, 3, & 4, Putney block, Waukesha, Wis. Filed in circuit court, Waukesha Co., Wis., Jan. 25, 1898. C. W. Fraser, clerk. Vol. 19, *pp.* 220.

654 In Circuit Court, Waukesha County, Wisconsin.

In re Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Stipulation.

It is hereby stipulated and agreed by and between the attorney-for and on behalf of the proponents and contestants herein that said proponents be, and are hereby, authorized to take the fur coat and cap introduced in evidence upon the trial of said matter and belonging to said deceased, and that said proponents may retain possession thereof until ordered or directed to be returned to this court, if necessary.

Dated Jan. 18th, 1898.

RYAN & MERTON,
Att'ys for Proponent.
CARNEY, CLASEN & WALSH,
Att'ys for Contestant.

Upon the above stipulation it is ordered that proponent or his att'ys be permitted to withdraw the said fur coat & cap from the files of this court.

By the court:

JAMES J. DICK,
Circuit Judge.

[Endorsed:] Circuit court, Waukesha county. *Re* estate of Joseph Fabacher, deceased. Order permitting the withdrawal of Exhibits Fur Coat and Caps. Filed — circuit court, Waukesha Co., Wis., Jan. 18, 1898. C. W. Fraser, clerk. Vol. 19, *pp.* 221.

655 STATE OF WISCONSIN:

In Circuit Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Now comes the contestant herein, by Carney, Clasen and Walsh, her attorneys, and hereby files exceptions in writing to the finding of fact and conclusions of law entered in the above-entitled matter by the circuit court of said county on the 5th day of January, A. D. 1898, as follows, to wit:

1.

The contestant herein excepts to the third finding of fact herein, to wit, "that at the time of the making of said will and at the time of the death of said deceased he, said Joseph Fabacher, was a resident and inhabitant and his domicile was at the city of Waukesha, in the county of Waukesha and State of Wisconsin; that on the 20th day of June, A. D. 1895, said testator, Joseph Fabacher, in his lifetime, duly acquired a domicile and residence in and then and there became an inhabitant of Waukesha, in Waukesha county, Wisconsin; that such residence and domicile of said Joseph Fabacher at Waukesha, in Waukesha county, Wisconsin, continued uninterruptedly from said 20th day of June, 1895, down to and including the 3rd day of March, A. D. 1897, the date of his death," for the reason that said finding is contrary to law and evidence taken on the trial of said cause.

2.

The contestant herein further excepts to the fifth finding of fact herein, to wit, "that at and prior to the making of said will so proposed for probate, and on the 30th day of September, A. D. 1895, said testator, Joseph Fabacher, in his lifetime, and while so
656 domiciled at Waukesha, Wisconsin, was duly and legally married at the city of Milwaukee, in Milwaukee county and State of Wisconsin, to one Magdalena Frey, who survives him as his widow; that the issue of said Joseph Fabacher and Magdalena Frey is eleven children, viz:

Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Anthony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick (*neé* Fabacher), Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, all of whom were born prior to said marriage of September 30th, 1895, and all of whom were by their said father, Joseph Fabacher, in his lifetime and subsequently to said marriage duly and severally recognized by him as his children and offspring, and that all of said children were at the time of his death and now are heirs-at-law of said Joseph Fabacher, deceased,"

for the reason that said finding is contrary to law and to the evidence taken on the trial of said cause.

3.

The contestant herein further excepts to the first conclusion of law herein, to wit, "that the domicil of said testator, Joseph Fabacher, at the time of his death, on March 3rd, A. D. 1897, was at the city of Waukesha, in the county of Waukesha and State of Wisconsin," for the reason that the same is based upon erroneous findings and is contrary to law.

4.

The contestant herein further excepts to the second conclusion of law, to wit, "that said testator, Joseph Fabacher, left him surviving his widow, Magdalena Fabacher, and twelve children, viz., Antoinette Thorman (*née* Fabacher), Joseph Fabacher, Albert Fabacher, Lawrence Fabacher, Anthony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick (*née* Fabacher), Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, his next of kin and heirs-at-law, all of whom are of full age, except
657 the children Magdalena Fabacher and Jacob Fabacher, and that all of said children are the legitimate and duly legitimatized children of said Joseph Fabacher, deceased, under and by virtue of the laws of the State of Wisconsin," for the reason that the same is based upon erroneous findings and is contrary to law, with the exceptions of that part of said conclusion of law which declares Antoinette Thorman, the contestant, a legitimate child and heir-at-law of said deceased.

5.

The contestant herein further excepts to the third conclusion of law, to wit, "that the said will of said Joseph Fabacher, deceased, so offered for probate, is entitled to probate in the county of Waukesha and State of Wisconsin as the last will and testament of said Joseph Fabacher, deceased, and the same hereby is admitted to probate as the last will and testament of said deceased," for the reason that the said conclusion is based upon erroneous findings and is contrary to law.

6.

The contestant herein further excepts to the fourth conclusion of law, to wit, "that judgment should be entered by this court admitting to probate the will of said Joseph Fabacher, deceased, and affirming the judgment of the county court admitting the same to probate, and that the records and proceedings herein should be transmitted to the county court for Waukesha county for further proceedings according to law, and that the proponent's costs and attorneys' fees and the fees of the guardian *ad litem* in the circuit court should be paid out of the estate of said deceased," for the reason that said conclusion of law is based upon erroneous findings and is contrary to law.

7.

The contestant herein further excepts to the order of said court wherein judgment is ordered to be entered in accordance
658 with the findings of fact and conclusions of law herein in the following language, to wit, "let judgment be entered in accordance with these findings," because the same is contrary to evidence taken on the trial of said cause and is contrary to law.

Dated this 2nd day of February, A. D. 1898.

CARNEY, CLASEN & WALSH,
Attorneys for Contestant.

[Endorsed:] Circuit court, Waukesha county. In the matter of the probate of the last will and testament of Joseph Fabacher, deceased. Exceptions to findings of fact and conclusions of law. Filed in circuit court, Waukesha Co., Feb. 4, 1898. C. W. Fraser, clerk.

659 STATE OF WISCONSIN:

Circuit Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

ANDREW J. FRAME, Proponents; MAGDALENA FABACHER and Jacob Fabacher, Minors, by D. S. Tullar, Their Guardian *ad Litem*, Respondents,

vs.

ANTOINETTE THORMANN, Contestant and Appellant.

It is hereby stipulated and agreed by and between the undersigned attorneys for the respective parties to the above-entitled action that the time in which the appellant is to serve upon the respondents a bill of exceptions be, and the same is hereby, enlarged and extended until the 25th day of May, A. D. 1898.

Dated at Waukesha, Wis., this 19th day of March, A. D. 1898.

RYAN & MERTON,
Attorneys for Proponent.
D. S. TULLAR,
Guardian ad Litem for Minors Interested.
CARNEY, CLASEN & WALSH,
Attorneys for Appellant.

On reading and filing the above stipulation it is hereby ordered that the time in which the appellant is to serve a bill of exceptions in the above-entitled action be, and the same is hereby, enlarged and extended until the 25th day of May, A. D. 1898.

Dated this 28 day of March, A. D. 1898.

By the court:

JAMES J. DICK,
Circuit Judge.

[Endorsed:] O. Circuit court, Waukesha county. In the matter of the estate of Joseph Fabacher, deceased. Stipulation and order extending time to file bill of exceptions. Filed in circuit court, Waukesha Co., Wis., Mar. 29, 1898. C. W. Fraser, clerk. Vol. 19, pp. 230.

660 STATE OF WISCONSIN:

In Circuit Court, Waukesha County.

In the Matter of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Order to Show Cause.

Upon all the records, proceedings, orders, and judgments heretofore had in said matter and upon all the records and papers on file in this court, let the contestant show cause, if any she have, before this court on Tuesday, May 3rd, A. D. 1898, at the court-house, in the city of Waukesha, Waukesha county, Wisconsin, at the opening of court on said day, or as soon thereafter as counsel can be heard, why the originals, records, and proceedings in this matter should not be returned to the county court for Waukesha county for further proceedings, according to law, and why the estate should not be proceeded with for settlement, as provided by law, and why the court should not direct that copies of the judgment-roll in said action be sent to the Supreme Court, in pursuance of the notice of appeal hereinbefore served, in lieu of the originals, and for such further order as may be just.

It is further ordered that a copy of this order be served upon Messrs. Carney, Clasen and Walsh, attorneys for the contestant, at least twenty-four hours before the day of hearing.

Dated April 30, 1898.

D. J. HEMLOCK,
Court Commissioner in and for Waukesha County, Wisconsin.

[Endorsed:] Original. Circuit court, Waukesha county. *Re* last will and testament *plaintiff* of Joseph Fabacher, dec'd *defendant*. Order to show cause. Ryan and Merton, attorneys for proponent. Due service of within order to show cause admitted this 30th day of April, A. D. 1898. Carney, Clasen & Walsh, att'y for contestant. Vol. 19, pp. 220.

661 In Circuit Court, Waukesha County.

In the Matter of the Last Will and Testament of JOSEPH FABACHER, Deceased, on Appeal of Antoinette Thorman, Contestant.

In the above-entitled action his hon. James J. Dick, circuit judge, presiding, charged the jury as follows:

GENTLEMEN OF THE JURY: The many questions presented and the many instructions requested by the respective parties will necessarily

make the charge a long one in order to present fairly the case to you. This case if of conside-able importance. The taking of the testimony has consumed a good deal of time and has necessarily taken a wide range. It devolves upon the court to instruct you upon the law by which the case should be determined, and I ask your careful attention and consideration to the charge now to be given to you. This action is brought to determine whether or not a paper-writing purporting to be the last will and testament of Joseph Fabacher, deceased, shall be proved, allowed, and admitted to probate as the last will and testament of said deceased. Joseph Fabacher died in the city of New Orleans, State of Louisiana, on the 3rd day of March, 1897, leaving the said alleged will, bearing date the 29th day of October, 1897, and executed at the city of Waukesha, Wisconsin, on said 29th day of October, 1897. The said alleged will is in words and figures as follows: "I Joseph Fabacher, of Waukesha, Wis., being of sound mind and memory, but mindful of the uncertainties of human life, do make, publish and declare this, my last will and testament; hereby revoking all former wills devises and bequests by me made.

First. I will and direct that all my just debts, funeral ex-
662 penses and expenses of administration be paid out of my personal estate.

Second. I donate and bequeath to my beloved wife, Magdalena the income from twenty thousand dollars of four per cent. New Orleans city bonds, to be paid to her by the executor or trustee of this my last will and testament, as collected by him, upon the express condition, and provided however, that she, my said wife, Magdalena shall continue to live and cohabit with me as my wife, and care for me in health and sickness until my death; otherwise she shall take nothing hereunder.

Third. I will and bequeath unto my brother Johannes Fabacher of Havre, France, an annuity of two hundred dollars to be paid to him by the executor or trustee of this my last will and testament, each year so long as he shall live, and at his death, the further sum of one hundred dollars to provide for his funeral expenses.

Fourth. All the rest, residue and remainder of my property, both real and personal, of whatsoever name or nature, and wheresoever situated, I give, devise and bequeath to my ten children, viz: Joseph H. Fabacher, Albert Fabacher, Anthony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick, *née* Fabacher, Alis Fabacher, Magdalena Fabacher and Jacob Fabacher, share and share alike, to each one-tenth part thereof, to have and to hold as their own forever.

Fifth. Upon the death of my said wife Magdalena, or upon the failure of the provision for her contained herein, by reason of non-performance on her part of the condition therein, I will, devise and bequeath said twenty thousand dollars of four per cent. New Orleans bonds to my said children, share and share alike, to each one-tenth part thereof.

Sixth. I nominate and appoint Andrew J. Frame of Waukesha,

Wisconsin, sole executor and trustee of this my last will and testament.

663 In witness whereof I have hereunto set my hand and seal this 29th day of October, A. D. 1896.

JOSEPH FABACHER. [SEAL.]

The said alleged will of said deceased is presented for proof, allowance, and probate by A. J. Frame, the person who is named in said alleged will as executor and trustee; and Antoinette Thorman, who is a daughter of said deceased and Maria Anna, who was the former wife of said deceased, contests the proof, allowance, and probate of said alleged will on the ground and for the reason, as she alleges:

1st. That said proposed will and testament was not executed in the manner and form requierd by law.

2nd. That said Joseph Fabacher at the time of the execution was under undue and improper influence exercised over and upon said deceased, to the extent of destroying his free will and agency in the execution thereof, and that such undue influence was particularly exercised by Magdalena Fabacher, widow of said deceased, and by divers other persons and beneficiaries under said proposed last will and testament.

3rd. That the said Joseph Fabacher, deceased, was continuously, since the year 1843 and up to and at the time of his death, domiciled in the city of New Orleans, State of Louisiana, and during all that time was an inhabitant and resident thereof, and that this court has no jurisdiction in the pr-bate of the said alleged will and testament and in the settlement and distribution of the estate of said deceased. It appears from the undisputed evidence in the case that the said deceased, by his wife "Maria Anna," had two children, the issue of their marriage—that is, Antoinette Fabacher, now Antoinette Thorman, who contests the alleged will, and Andrew Fabacher, who died about ten years ago unmarried and without issue. It is claimed and testimony has been offered by the

664 contestant to the effect that the said Maria Anna, the said wife of said deceased, obtained a divorce from said deceased on or about the 22nd day of January, 1874, and has since intermarried with one Joseph T. Schick; and it further appears from the evidence in the case that the said deceased, by one Magdalena Frey, had eight children—that is, Lawrence, Joseph H., Albert, Anthony, Louis, Peter, John J., and Barbara—and it is claimed by the contestant that said children are illegitimate; and it further appears by the evidence in the case that said deceased married said Magdalena Frey, at the parish of St. Landry, State of Louisiana, on or about the 27th day of July, 1874, and that the issue of such marriage are three children—that is, Alice, Magdalena, and Jacob—and it is claimed by the contestant of said will that these children are also illegitimate. It is claimed on the part of the proponent of the alleged will that all of said named children of said deceased are legitimate; and, in view of the contentions of the parties to this action upon this question, it may not be improper to state the

status of these children under the laws of this State, although the question of the legitimacy of such children has very little or anything to do with the determination of the questions of fact submitted to you. It appears from the evidence in the case that the said deceased and said Magdalena Frey were married at the parish of Landry, State of Louisiana, July 27th, 1874; that the said deceased arrived in the city of Waukesha, Wisconsin, on or about June 30th, 1895, and that the said deceased and said Magdalena Frey were again married in the city of Milwaukee, Wisconsin, on the 30th day of September, 1895. The statutes of this State provide "that an illegitimate child shall not be allowed to claim, as representing his father or mother, any part of the estate of his or her kindred, either lineal or collateral, unless before his death his parents shall have intermarried, and his father, after such marriage shall have recognized him as his child, in which case, such child shall
665 thereby be legitimatized, and he and the legitimate children shall be considered as brothers and sisters, and on the death of either of them intestate and without issue, the others *h*sall inherit his estate and be theirs, as hereinbefore provided, in like manner, as if all the children had been legitimate, -aving to the father and mother respectively their rights in the estates of all the said children, as provided hereinbefore, in like manner, as if all had been legitimate. And that the issue of all marriages declared noll in law shall nevertheless be legitimate." It is a general proposition of law that marriage is a question of status, and that the status of each person is to be determined finally by the tribunals of that country where he has his domicile, and if it shall be found as a fact that at the time of the said marriage of said deceased and said Magdalena Frey at the city of Milwaukee, Wisconsin, on the 30th day of September, 1895, the said deceased was domiciled in this State, and if it is further found as a fact that the said deceased recognized the said named children after said marriage of September 30th, 1895, as his own children, then said named children of said deceased are legitimate under the laws of this State; and such provisions, it is said, are very just and humane and serve to mitigate somewhat the severity of the old law, which visited upon the children the sins of their parents. It surely cannot be wrong for a man to atone for and make amends in this life so far as possible for any misdeed done, and to console and protect the weak and the innocent from the consequences of such misdeed, for such reparation is in harmony with the principles of truth, honesty, and justice, and in accordance with the law, or should be human or divine, and it is the law in this State, so far as the question of legitimacy is concerned, provided that said deceased was domiciled in this State at the time of the marriage in the city of Milwaukee, and provided that said deceased, after such
666 marriage *the said deceased*, recognized said children as his own; that all of said named children except the said Antoinette and the said Lawrence are named as legatees in said alleged will, and that said Magdalena, the widow of said deceased, and all of said children except the said Andreas are now alive. It is an admitted fact in this case that said deceased up to the 20th day of

June, in the year 1895, was an inhabitant and resident of the city of New Orleans, State of Louisiana, and that said deceased arrived in the city of Waukesha, Waukesha county, State of Wisconsin, on or about the 20th day of June, in the year 1895. It is claimed by the proponent of said alleged will that said deceased, after his arrival in said city of Waukesha on the 20th day of June, 1895, became and was an inhabitant and resident of and in said city of Waukesha, Waukesha county, State of Wisconsin, and that said deceased made and recognized a domicil therein, and that said deceased at the time of his death, March 3rd, 1897, was an inhabitant and resident of and in the said city of Waukesha, Waukesha county, State of Wisconsin, and that his domicil at such time was at and in said city of Waukesha, Waukesha county, State of Wisconsin. It is claimed by the contestant of said alleged will that said deceased never became an inhabitant and resident of and in said city of Waukesha, and never acquired a domicil therein, and that he never abandoned or lost his domicil in the said city of New Orleans, and that said deceased at the time of his death, March 3rd, 1897, was an inhabitant and resident of the said city of New Orleans, State of Louisiana, and that his domicil at such time was at and in the said city of New Orleans, State of Louisiana. A will must first be presented to the county court, in probate, for proof, allowance, and probate. The alleged will was so presented, and the order and judgement of said county court has been appealed from and brought to this court, and the matter is now in this court to be heard, tried, and determined as if originally brought in this court, and the
667 order and judgment of said county court in the matter cannot be considered upon this trial. The questions of fact submitted to you in this action for your determination are as follows:

First. Was the paper-writing presented for proof, allowance, and probate as the last will and testament of Joseph Fabacher, deceased, executed in conformity with the provisions of the statutes of this State relating to wills?

Second. Was the said alleged last will and testament of said Joseph Fabacher, deceased, his own voluntary act and deed or was it the result and product of undue influence?

3rd. Was the domicil of said Joseph Fabacher, deceased, at the time of his death, the 3rd day of March, 1897, at the city of Waukesha, county of Waukesha and State of Wisconsin, or was it at the city of New Orleans, State of Louisiana? And these questions of fact you must determine from the evidence given in the case under the instructions of the court; and whether or not the alleged will shall be proved, allowed, and admitted to probate must be determined by the laws of this State; and in this charge the court will endeavor to state the law applicable to the case as it obtains in this State. Evidence is whatever is exhibited to a court or a jury under legal sanction, whether it be by matter of record or writing or by the testimony of witnesses produced in court in order to enable the court or the jury to pronounce with certainty the truth of any matter in dispute; and proof is the effect of that evidence which is sufficient to produce conviction in the mind of the truth or exist-

ence of the fact or facts in controversy. The court charges you for the purposes of this special verdict that the said alleged last will and testament of said Joseph Fabacher, deceased, was executed in conformity with the provisions of the statutes relating thereto, and therefore your answer to the first question should be "Yes;"
668 and the court charges you for the purposes of this special verdict that the said alleged last will and testament of said deceased was his own voluntary act and deed and was not the result and product of undue influence, and therefore your answer to the second question should be, "That the said alleged last will and testament of said deceased was the said deceased's own voluntary act and deed;" and the court has written in such answer to such question. The answers to the first and second questions should not affect your answers to the remaining questions.

And the remaining question of fact submitted to you for your determination is, "Was the domicil of said Joseph Fabacher at the time of his death, the 3rd of March, in the year 1897, at the city of Waukesha, county of Waukesha, State of Wisconsin, or was it at the city of New Orleans, State of Louisiana?" And your answer to this question you should determine from the evidence given in the case under the instructions of the court; and you are not to consider the effect which your answer to this question may have upon the order and judgment in this action, for with that you have nothing to do. The object in submitting this question to you is to secure a fair and impartial answer to the question, free from bias or prejudice in favor of either party or in favor or against a particular result, for the information of the court. It is for the court to give such effect to your answer as the court may deem it entitled to under the law of the case. The statutes of this State provide that "the jurisdiction of the county court shall extend to the probate of wills and granting letters testamentary and of administ*ar*tion on the estates of all persons deceased, who were at the time of their decease inhabitants of or residents in the same county, and of all who shall die without the State having any estate within such county to be administered, and in many other cases authorized by law." And this court is also governed by the said provisions of the statutes. It is an undisputed fact in this case
669 that said deceased died in the city of New Orleans, State of Louisiana, on the 3rd day of March, in the year 1897. It is therefore an important question in this action, in view of the provisions of the statute just cited, to determine where, in fact, the domicil of said deceased was at the time of his death. Every person of legal competency has the right to dispose of his property by will. The law gives this right, and if such right be legally exercised no person can challenge or defeat it. In order to allow a will to be proved, allowed, and admitted to probate in this State the person making and executing the same must be of sound, disposing mind and of legal age at the time of the execution of the same, and such person must not be unduly influenced to make and execute such will, and the will must be executed in conformity with the provisions of the statute relating to wills, and under the provisions of

the statutes referred to such person must be an inhabitant of or resident in the county wherein such will is presented for proof, allowance, and probate; and in this case, so far as your findings are concerned, it may be assumed as undisputed facts therein that the said deceased, at the time of the execution of the alleged will, was of sound mind; that the said deceased was not unduly influenced to make and execute the said alleged will, and that said alleged will was executed in conformity with the provisions of the statute; and the remaining essential element of a valid, legal will is whether or not the said deceased was an inhabitant of or resident in the county of Waukesha, State of Wisconsin; and this element is substantially submitted to you for your determination by the said third question in the special verdict. The terms "inhabitant," "inhabitancy," "resident," "residence," and "domicil" in our States, so far as this case is concerned, may be considered convertible terms; and in this charge, when the terms "inhabitant," "inhabitancy," "resident," "residence," as the case may be —, are used they may be
670 considered and taken by you as meaning the same thing, except as it may be otherwise stated. Residence has been defined to be the act of residing, abiding, or dwelling in a place for a continuance of time; the place where one resides; the act or state of being seated or settled in a place; the act, state, or habit of dwelling or abiding in a place; the act of being a resident of or inhabitant; the place where one resides, habitation, domicil. A person cannot have more than one domicil at one and the same time for one and the same purpose, and every person has a domicil somewhere; he can have but one, and therefore to lose one he must acquire another; and where a person is known to have a domicil in a given place he is presumed, in the absence of proof of a change, to retain such domicil. The place where a man carries on his established business or profession, occupation, if any he had, and has a home and a permanent residence may be stated to be his domicil. A legal residence is the place of a man's fixed habitation, where his political rights, such as the right of the elective franchise, are to be exercised and where he is liable to taxation. It is, in fact and intent, where he has an established home—a place where he lives and has an abode—where service of process of court could be had upon him by copy, where he has an actual habitation. A long-continued residence is not alone sufficient to constitute domicil, unless accompanied by the intention of the person whose domicil is in question. A person may live a long time in a place and not acquire a domicil therein, if such person has, during all such time, the intention to return to his former home and not an intention to make such place his home; and appertaining to the definition, the acquisition and change thereof, the following may be considered as accepted rules of law on the subject: Every person of full age having a right to change his domicil it follows that if he removes to another place with the intention of making it his permanent residence it
671 becomes at once his place of domicil. If a person has actually removed to another place with the intention of remaining there for an indefinite length of time, having a fixed, present domi-

cil at such place, it is to be deemed his place of domicil, notwithstanding he may entertain a floating intention to return at some future period. A person having such place of fixed habitation or abode temporarily, as for a particular purpose, either for business, pleasure, or health, with the intent of returning to the same as soon as such purpose is accomplished, does not lose his residence or habitation in such place of abode, and the residence must be actual and *bona fide;* no mere pretense of residence; no passing vis-t; no temporary presence; no assumption of residence; nothing short of actual abode, with intention of permanent residence, will fill the letter or the spirit of the statute. There is no evidence in this case tending to show that the deceased, when he came to Wisconsin or at any time, was a fugitive from justice, fleeing from the State of Louisiana to the State of Wisconsin to avoid or escape arrest or punishment for any criminal offense; and any claim made that such was the case is not based on the evidence in the case and should not be considered by you. The term residence does not mean physical location continuously. It is used in the broad sense, so far as this case is concerned, of domicil requisite to citizenship. For the purpose of such residence there must be an actual location in the place in question with the intention of making it a permanent home. That is sufficient to meet all the requisites of legal residence at the outset. In one sense a person may have more than one place of residence, but he can have only one which has the element of permanency essential in a legal sense to his domicil. A person can have only one domicil at one time, and to constitute that there must be an actual location with the intent to make such place his home indefinitely; but to secure a domicil does not require any considerable length of
672 time. Residence at a place for any length of time, however short, with the concurring intention of permanently residing at such place renders such place in a legal sense the person's domicil, and it being once fixed it will continue until abandoned, without reference to any mere absence for a temporary purpose with the fixed intention of returning when such purpose shall be accomplished. It will not do, however, to rest the decision of the question of residence entirely upon the intention and purpose of mind of the deceased as to a change of residence. The intent and fact of residence must concur. It would be impracticable to ask you to find upon all the seperate facts bearing upon the question of domicil by way of a special verdict, and therefore the third question has been framed in the form it is, submitting to you generally wher- the domicil of the deceased was at the time of his death, and the determination of this question involves a great number of facts and circumstances. It is impossible to lay down any positive rule with respect to the evidence necessary to establish the intention. Courts and juries must necessarily draw their conclusions from all the circumstances of each case, and each case must vary in its circumstances, and in one a fact may be of the greatest importance, and in another the same fact may be so qualified as to be of little weight. It will be impossible at this time for the court to state all

the facts and circumstances which may be considered on the question of domicil. You should be governed in this matter by the general rules on the subject, which are given you in this charge. There are some facts, however, which if you find from the evidence have been proven in this case you may consider with such other facts as you may find to exist from the evidence on the question of domicil, among which are the following: It has been stated that every person must have a domicil somewhere. First, the domicil of origin or the domicil received at his birth, which he re-
673 tains until he acquires another, and the one thus acquired is in like manner retained; in other words, every independent person, of full age, has at any given moment of his life either the same domicil as that which he received at his birth, technically called the domicil of origin, or a different domicil which he has acquired when of full age by his own act and choice, as has been stated is acquired by the combination of residence and the intention to reside in a given country, and can be acquired in no other way; and, as has been stated, the residence which goes to constitute domicil need not be long in point of time; if the intention of permanently residing in a place exists, a residence in pursuance of that *of that* intention, however short, will establish a domicil. 1st. The intention must amount to a purpose or choice. 2nd. The intention must be an intention to reside permanently or for an indefinite period in another place. 3rd. The intention must be an intention of abandoning—that is, ceasing—to reside permanently if in the former domicil. 4th. The intention need not be an intention to change allegiance. The intention requisite for a change of domicil is an intention completely to abandon the former place of abode, and an intention to settle presently and permanently in another place, and it is said that intention implies three things—capacity to choose, freedom of choice, and actual choice. There must be freedom of choice; a compulsory change of bodily presence is not a change of domicil, and a person must choose freely, without fear or mental restraint; motive is immaterial, except as an evidence of intention, so long as the individual remains free to choos-, and there must be an actual choice, and such intention must not be conditional or contingent, but it must be an intention, as has been stated, of ceasing to reside permanently in his former domicil and to reside permanently or for an indefinite period in another place. A former place of abode must be abandoned only as a place of abode; therefore occasional returns or an intention to
674 return for temporary purposes of business or pleasure to remove one's family or the like will not prevent a change of domicil, and the mere retention of landed estate at the former place of abode is not inconsistent with an abandonment as a place of abode. Any circumstance which is proved in the case may be evidence of domicil, which is evidence either of a person's residence or of his intention to reside permanently within a particular place or county; hence expressions of intention to make a home in a particular place or from which such intention or the absence of it may be inferred, presence in a place, time of residence, the mere absence

of proof that a domicil once acquired has been changed, the ownership or purchase of land, the mode of dealing with a household establishment, the buying of a burial place, the deposit of plate and valuables, the exercise of political rights, official acts of a public officer recognizing a person as an inhabitant, payment of personal taxes, jury service, and you may also consider on the question of domicil any statements contained in the alleged will as to wher- the deceased claimed he belonged, giving such statements, if any you find there is therein, such weight as evidence as you think it is entitled to, and the like matters and things are all matters which may be considered in determining the question of a person's domicil. The place where a man educates his children may be considered by you upon the question of residence, though it does not prove it, and thus considered with the evidence which goes to make up a domicil, and the place where a married man's family resides is generally to be deemed his domicil, but the presumption from this circumstance may be controlled by other circumstances, and the house of trade or the center of a man's business, if he has any, raises a strong presumption going to fix a man's domicil; but in determining the question of domicil, when the house of trade and center of business is opposed by the locality of the wife
675 and family, such locality is deemed the criterion of domicil.

The place of a person's death or the place of his burial is considered but of little importance in determining his domicil. Residence in a country is *prima facia* evidence of the intention to reside there permanently, and in so far is witness bearing upon the question of domicil. The effect of residence as evidence depends both as to the time and mode of residence. Residence in a place, however, is not even *prima facia* evidence of domicil when the nature of the residence either is inconsistent with or rebuts the presumption of an intention to reside there permanently. Domicil of origin easily reverts—that is to say, even though a man has effected a change of his original domicil by actual removal and *bona fide* intention, yet if he returns to his old home, less evidence of intention, fewer circumstances are required to show the resumption of domicil of origin than to show the acquisition of a new domicil. That place is to be regarded as a man's domicil which he has freely chosen for his permanent abode. The term permanent abode excludes neither a temporary absence nor a future change; it is only meant that the intention of mere transitory residence must not at present exist. The declarations of a person whose domicil is sought to be fixed are not conclusive on the question of the intentions of the person as to such domicil. Acts are regarded as more important than declarations. A declaration, written or oral, depends upon a variety of circumstances, and should be determined in such case by the circumstances surroundings such circumstances and connected therewith. The time, the occasion, and the manner of such declaration, wher- made, their reasonableness and consistency with each other and with the other proven facts in the case, the presence or absence of suspicious or sinsster purposes in making them, the character and temper of the person making them, the

lenght of time which has elapsed between the time of the alleged utterance of such declarations and the time and occasion when they are testified to, may all be taken into consideration by you on the question of the domicil of the deceased at
676 the time of his death, and on such question casual expressions and conversations are of less value as evidence than declarations made to persons who have an interest in some manner in such declarations or declarations made in the usual course of business. A mere declaration alone by itsself that a person prefers a residense in one county to a residence in another county has but little significance. Oral declarations made by the party whose domicil is in question and invoked on his behalf, although admissible in evidence as bearing upon the question of domicil, are considered of less value as evidence on such question than the acts and written declarations of the party and declarations made in the usual course of business, especially when such oral declarations are conflicting. If you find from the evidence in the case that the deceased, in the spring of 1895 or at any other time, made up his mind to change his domicil from the State of Louisiana to the State of Wisconsin, and further find that he did actually make such change of his domicil, then it makes no difference why he made up his mind to make such change of domicil, and the motive for such change, whatever it may have been, you need not consider except as bearing upon the question of his intention to make the change, for the law is that a man has the right to change his domicil for any cause satisfactory to himself, and the law does not inquire into the purpose or motives which induced him to make such change; and if a man has two places of residence at different times of the year, the one will be assumed to be his domicil which he himself selects, describes, or admits to be his home or which appears to be the center of his affa-rs or where he votes or exercises the rights and duties of a citizen. Presumptions from mere circumstances will not prevail against positive facts which fix or determine the domicil. A man may have two or more residences, but he cannot have but one domicil, and in such case the use of the word home, which, although sometimes taken synonomously with domicil, has no particular significance to that effect, unless it appears that such word was used for the express
677 purpose of showing wher- the party has his residence or makes hi- regular home. Where a person has two residences, an entry made by such person in a hotel register, when such person is traveling from one residence to the other, would not be very important evidence in determining the actual place of the domicil of such person, since such person might describe himself as of either place, according to circumstances; yet it is for you to give such weight to such fact, if fact you find it to be, as you think it is entitled to; and doing service as a juror in a certain place, if such you find to be the fact, may or may not have a bearing upon the question of domicil, according to circumstances; and a person summoned as a juror, who was not bound to serve as such juror, could claim as an excuse for service as such juror any incapacity, either of age or want of residence, and such excuse as claimed would be of

little weight in determining the question of domicil. Frequently a person's residence is of doubtful nature and his intention as to that residence may be more equivocal and obscure. Both are sometimes to be gathered from slight circumstances of mere presumption and from equivocal and conflicting acts; and an intention of permanent residence may often be engrafted upon an inhabitancy originally taken for a special or fugitive purpose; and a circumstance of much importance as bearing upon the question of what State a man has taken up a permanent residence in is the act of voting. It is said that this act is so important and deliberate that it should have great weight as evidence upon the question whether a man believes that he is a resident of a particular place or State, for it is said a person must be presumed to know that he has no right to vote in a State unless he was a resident of such State; but the exercise of political rights by voting within a particular jurisdiction is not conclusive evidence upon the question of domicil of succession. The term domicil of succession may be defined
678 to be the actual residence of a man within some particular jurisdiction of such character as shall, in accordance with certain well-established principles of public law, give direction to the succession of his personal estate. It is evidence as you shall find the fact to be which may serve to indicate the intention of a person as to where in fact his domicil is. The term domicil of succession may be taken in this case to be synonymous with the term domicil of choice—that is, the actual domicil of the deceased at the time of his death. The act of voting, as stated, the presemption is undoubtedly in favor of innocence and knowledge of the voter, yet his ballot may have been cast fraudulently or through mistake of his legal rights. It is a question of fact for you to determine from the evidence as to whether or not the deceased voted in this State in good faith, and you are to give such weight to such act as you believe it is entitled to under the evidence in the case. It is your province and duty to give such weight to the testimony of the several witnesses as to the matters testified to by them bearing upon the question of domicil as you believe it is entitled to when considered with all the testimony, facts, and circumstances proved upon the trial. The determination of what facts have been proven and are true as shown by the evidence in the case is alone for you under the instructions of the court. The court has instructed you as to the law applicable to certain facts, if found by you to exist from the evidence given in the case, and the facts in the case as shown by the evidence you must first find, and then apply to such facts so found the instructions given you by the court and then determine the question of the domicil of the deceased submitted to you. The proponent of the alleg-d wills holds the affirmative of the issue as to proving that the alleged will was executed in conformity with the provissions of the statute, and the court has instructed you on that fact, and also on the fact that said alleged will was the deceased's own voluntary act and deed, and has directed you to answer
679 the first and second questions both in the affirmative. The *the* proponent holds the affirmative of the issue *on* this action on the question of where the domicil of the deceased was at

the time of his death, March, 1897, and such fact must be established by a preponderance of the evidence in the case, *or* by the greater w-ight of evidence is not necessarily meant the side which has the most witnesses, but the side which is entitled to the greater weight in view of all the facts and circumstances proven in the case and of the probability or improbability of the truth of the several statements of the witnesses and of the apparent consistency of such statements. Where you believe the truth to lie, in view of all the testimony, facts, and circumstances proved on the trial, after considering all such testimony, facts, and circumstances, is the preponderance of the evidence. It is the duty of the court to declare to you the law applicable to the questions su-mitted to you, and it is your duty to be governed by such statement of the law. It is your exclusive province and duty to determine the issues of fact submitted to you in this action and the weight and cred*a*bility of the testimony of the witnesses produced upon the trial, and if during the trial of this action any expression of opinion has, in your view, inadvert*a*ntly dropped from the court as to the cred*a*bility of any of the witnesses in the case, or as to the weight to be given to the testimony of any of the witnesses, or as to any of the disputed issues of fact in the case, you are not and should not be bound by it in considering your answers to the questions submitted to you.

And the granting or denial of any motion in the case or the decision of the admissibility of evidence should in no way affect you in passing upon the question of fact submitted to you, and you must not infer that in passing upon any such motion or in making any decision that the court was or is of the opinion that the domicil of the deceased at the time of his death was or was not in the
680 city of Waukesha, Waukesha county, State of Wisconsin.

The arguments of counsel in a case are valuable aids to both court and jury, but you should not regard or consider statements made by any attorney in the case that are not based on the evidence given in the case, if any such have been made. The law of the case you will receive alone from the court; and as jurors you can only act upon the evidence given upon the trial of this case, and from that and that alone you must determine the question of fact submitted to you, unaided, unassisted, and uninfluenced by any opinions or presumptions not formed upon or based on the evidence given in court. And in considering the testimony of the several witnesses and the weight to be given to such testimony you should take into consideration the opportunities the several witnesses have had of knowing the matters and things about which they have testified, their conduct and demeanor while testifyin*h*, their interest or lack of interest, if any, in the result of the action, the probability of improbability of the truth of their several statements, in view of all the testimony, facts, and circumstances proved on the trial. It is the duty of each juror, while the jury are deliberating upon their verdict, to give careful consideration to the views his fellow-jurymen may have to present upon the evidence in the case. A juror should not close his ears and stubbornly stand upon the position he first takes, regardless of what may be said by the other jur-men upon

the evidence in the case. It should be — object of all of you to arrive at a common conclusions, and to that end you should deliberate upon the questions submitted to you with calmness and paying proper deference to each other's views and opinions, based on the evidence given in the case, under the instructions of the court. This case has been fully and ably presented and tried by the attorneys and counsel for the respective parties; you have attentively listened to the testimony as it has been given on the trial and to the arguments of counsel, and have now received the charge of
681 the court. If you determine and find from the evidence in the case, under the instructions of the court, that the domicil of Joseph Fabacher, deceased, at the time of his death, March 3rd, 1897, was at and in the city of Waukesha, county of Waukesha, State of Wisconsin, your answer to the third question should be in the following form—that is, the domicil of said Joseph Fabacher, deceased, at the time of his death, the 3rd day of March, in the year 1897, was at the city of Waukesha, county of Waukesha, State of Wisconsin. If you d-termine and find from the evidence in the case, under the instructions of the court, that the domicil of Joseph Fabacher, deceased, at the time of his death, the 3rd day of March, in the year 1897, was at the city of New Orleans, State of Louisiana, your answer to the 3rd question should be in the following form—that is, the domicil of said Joseph Fabacher, deceased, at the time of his death, the 3rd day of M*rhca*, in the year 1897, was at the city of New Orleans, State of Louisiana. Take the case, gentlemen, and bring your best judgments to the investigation of what facts have been proven and are true in this case, under the evidence given in the case. The facts in the case upon the question submitted to you are for you to find and determine, on the evidence in the case; carefully consider all the evidence given on the trial of this case, and, without bias, passion, or prejudice, determine, so far as lies in your power, on which side and wherein the truth lies, and render such a verdict as you shall find to be right and according to the truth of the matter.

[Endorsed:] In circuit court, Waukesha county. In the matter of the last will & testament of Joseph Fabacher, deceased, on appeal of Antoinette Thorman, contestant. Charge. Filed in circuit court, Waukesha Co., Wis., May 2, 1898. C. W. Fraser, clerk.

681½ STATE OF WISCONSIN:

Circuit Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

ANDREW J. FRAME, Proponent; MAGDALENA FABACHER and Jacob Fabacher, Minors, by D. S. Tullar, Their Guardian *ad Litem*, Respondents,

vs.

ANTOINETTE THORMAN, Contestant and Appellant.

It is hereby stipulated and agreed by and between the undersigned, attorneys for the respective parties to the above-entitled action, that the time in which the appellant is to serve upon the respondents a bill of exceptions be, and the same is hereby, enlarged and extended until the 15th day of October, A. D. 1898.

Dated at Waukesha, Wis., this 17th day of May, A. D. 1898. This is not to interfere with the said case going on Aug. calendar of supreme court.

RYAN & MERTON,
Attorneys for Proponent.
D. S. TULLAR,
Guardian ad Litem.
CARNEY, CLASEN & WALSH,
Attorneys for Appellant.

On reading and filing the above stipulation, it is hereby ordered that the time in which the appellant is to serve a bill of exceptions in the above-entitled action be, and the same is hereby, enlarged and extended until the 15th day of October, A. D. 1898.

Dated this 17th day of May, A. D. 1898.

By the court:

JAMES J. DICK,
Circuit Judge.

[Endorsed:] O. Circuit court, Waukesha county. In the matter of the estate of Joseph Fabacher, deceased. Stipulation and order extending time to serve bill of exceptions. Filed in circuit court, Waukesha Co., May 23, 1898. C. W. Fraser, clerk. Vol. 19, *pp.* 230.

682 STATE OF WISCONSIN:

Circuit Court, Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

ANDREW J. FRAME, Proponent; MAGDALENA FABACHER and Jacob Fabacher, Minors, by D. S. Tullar, Their Guardian *ad Litem*, Respondents,

vs.

ANTOINETTE THORMAN, Contestant and Appellant.

Be it remembered that the above-entitled case came on for trial at the December, 1897, term of the circuit court for Waukesha county, Wisconsin, and was duly tried from the 5th to the twelfth of January, A. D. 1898, inclusive, before the said court and a jury, Carney, Clasen and Walsh appearing as attorneys for the contestant and E. Howard McCaleb, of counsel; Messrs. Ryan and Merton appearing as attorneys for the proponent and C. F. Buck, of counsel, and D. S. Tullar, Esq., appearing as guardian *ad litem* for Magdalena Fabacher and Jacob Fabacher, minors interested in said action, the Honorable James J. Dick, circuit judge, presiding.

On request of the contestant, a jury is demanded. Jury called and sworn, and on account of the sickness of Juror Pendergast it was stipulated in open court that the case be tried by eleven jurymen.

The proponent, to maintain and prove the issues on his part, introduced the following testimony:

E. MERTON, being sworn for the proponent, testified as follows:

683 I have lived in Waukesha since 1889. I am a lawyer by profession and a member of the firm of Ryan and Merton. I got acquainted with Joseph Fabacher in 1892; did business occasionally for him in a professional way. I drew a will for him at my office. He met me on the street and asked me when I would be in the office; that he wanted to see me. I told him and he came up there and told me he wanted a will drawn, and I made some memorandum on a paper with a lead pencil, and told him to call in a day or so and I would have a proof for him, and I did so. I told Mr. Newbury, the clerk in the office, to sit down to the typewriter and I gave him the items how he wanted to have it drawn, and it was done. He called a day or two after that. There was some little mistakes—different from what he wanted—so I had Mr. Newbury write it over, and after he had written it over he looked it over again and found he had made a mistake in the initial or name of one of the children and he had to draw it over the third time. He then, Fabacher, read it himself first and then asked me to read it for him and I did so, and he said that was right and he signed it in my presence and in the presence of Mr. Newbury, who was the

clerk in the office of Ryan and Merton, at my private office, and there was no one present excepting myself, Mr. Newbury, & Fabacher. Mr. Fabacher was of full age. There was no influence of any kind brought to bear upon him in my office. I saw him sign it. (Will shown to witness.) That is the instrument; that is Mr. Fabacher's signature and the signatures of myself and Mr. Newbury. Fabacher's signature was affixed to that in my presence and I signed as a witness in the presence of Mr. Newbury. We all signed in the presence of each other. He asked myself and Mr. Newbury to sign it as witnesses and declared it to be his last will and testament. The will was given to him and he said he was going to give it to Mr. Frame, who was named as executor in the will. Mr. Fabacher at the time of signing his will was in sound mind so far as I could judge,
684 and the will declares that Mr. Fabacher was a resident of Waukesha county, Wisconsin. I got his place of residence from Mr. Fabacher himself. I asked him, of course, about his children and family and where his place of residence was, and he said his residence was in Waukesha; this was his home. He said, "You ought to know it." That is the way I come to put it in the will. The name of Lawrence, one of the children, is omitted from the will. He said Lawrence was worth more money than he was; therefore he didn't need anything. He gave Lawrence's name and the names of the children, and I asked him who they were and he gave that and said he didn't want to leave anything to him. He said, "He has got more than I have and don't need it." I knew that he lived over on the north side of the river. I called it Bridge street, up next to Col. Enos's, in the second ward of this city. I was receiver of the Waukesha Water Company in 1895. I think in the month of August, 1895, he and Col. Enos wanted mains laid up that street, and Fabacher wanted them laid up there so as to put in sewerage and have the use of the water, and I told him we were short of money and suggested to him it would hardly pay for the short time he might be there, and he said, yes; it would. This is his home. He wanted to make connections with the water mains, and he and Col. Enos and another gentleman would furnish the money to lay the main pipe — it was done, and they advanced the money for this purpose and the mains were laid.

CHARLES NEWBURY, being duly sworn for proponent, testified as follows:

My name is Charles W. Newbury. I am a lawyer by profession and a member of the bar, engaged in the law office of Ryan and Merton, Waukesha, Wisconsin, and have been there a little over five years. I was acquainted with Joseph Fabacher in his lifetime. I know that he lived upon the hill near Col. Enos's, what is commonly known as Bridge street, in the city of Waukesha. I have been at his place. I was called upon to witness his last will and testament in the private office of Mr. Merton. (Will in question shown to wit-
685 ness.) That is the instrument: I drew it on the typewriter; Mr. Merton dictated it. I saw Mr. Fabacher sign it. He said it was his last will and testament. I signed it as a witness at

the request of Mr. Fabacher, who signed it in my presence and in the presence of Mr. Merton. Mr. Merton and myself signed in the presence of Mr. Fabacher and in the presence of each other. There was no influence of any kind brought to bear upon Mr. Fabacher to executed this instrument that I observed; it was his own free act and will. He was at that time of sound mind and of full age. This will was not drawn the first time Mr. Fabacher came to the office; it was written three times on account of some errors in the first two copies. In the first draft of it Mr. Merton found the errors, and I had misunderstood some of the instructions, and in the second Mr. Fabacher himself called attention to the error and the will was redrawn. I heard it read to him and saw him read it himself. He read it twice. He read the second draft of it and noted the error, which consisted only of the omission of an initial from the name of one of his children, I think Joseph, and it was redrawn. Just prior to signing the will I spoke to him in regard to where his residence was, and at that time he said Waukesha was his home, his residence. He said he voted in Waukesha and was going to vote for McKinley. He was what is known as — gold man; that was the question we were arguing over.

COUNSEL FOR PROPONENT: I offer in evidence the will dated the 29th day of October, 1897.

Received, marked Exhibit 1.

PETER FABACHER, being duly sworn for the proponent, testified as follows:

My full name is Peter Fabacher. I reside in the city of New Orleans, in the State of Louisiana. I was acquainted with Joseph Fabacher in his lifetime. He was my uncle. I am his brother's son. I have been personally acquainted with Mr. Fabacher
686 since 1853. I am 55 years of age. Joseph Fabacher died in the Touro infirmary, on Prytania street, in the city of New Orleans, Louisiana, from an operation on his navel. He came to see me about two weeks before his death. I went to see him, because I was told I had better go if I wanted to see my uncle any more; that he was going away, never to come back any more, and I told him not to go, that they would bring him back, but he said, "I don't care whether they bring me back or not." His residence at the time of his death was Waukesha. He had no house or property in the city at all. He told me that his residence was Waukesha. He wanted me to go along, to sell out and live up there. At the time he came to see me his physical condition was all right; nothing the matter, only he told me I had better come to see him. I told him I inquired about him every week, and he said, "You better come to see me; I am never coming back here no more." He was down to see his children. He wouldn't come down the last time, only his wife made him come down. He told me only his wife forced him to come down and see his children, and he came along down.

Objected to his declaration.

By the COURT: I suppose oral declarations of these statements of a party cannot be received only when connected with some act which is intimately or in close connection with the subject-matter in dispute.

COUNSEL FOR PLAINTIFF: It explains his presence in New Orleans.

By the COURT: That perhaps may be all right. He went to see his children. It is pretty close—that is, when you go into the field of what happened between him and his wife—it seems to me.

COUNSEL: I didn't ask him that.

By the COURT: What his wife said may be stricken out.

Plaintiff rests.

The contestant, to prove and maintain the issues on her part, introduced the following testimony:

687 COUNSEL FOR CONTESTANT: I offer in evidence a duly certified copy of the certificate of naturalization of Joseph Fabacher in 1855, together with the authentication signed by the judge and clerk, marked document A.

Objected to as incompetent, irrelevant, and immaterial.

By the COURT: I suspect they claim at one time he had a domicile in the State of Louisiana.

COUNSEL FOR PROPONENT: We concede that.

By the COURT: They may not be willing to take your concession. It is one step to show that he had a domicile. We might as well understand the rule of evidence in cases of this character now as at any time. There is no error in the reception of evidence in a case tried by a jury where the verdict is simply advisory, but may be in the rejection of evidence. In other words, the verdict being simply advisory, it is the findings of the court which control. They must be found on proper evidence in the case. Therefore any evidence which is received improperly if not incorporated in the findings in some way or the findings based thereon I think would not be error; the rejection of evidence might be. Therefore I shall be liberal in receiving. I will receive it for what it is worth.

Exception taken.

Document read.

COUNSEL FOR CONTESTANT: I offer in evidence the divorce proceedings duly authenticated, according to the act of Congress, by the judge and clerk.

Objected to as immaterial.

COUNSEL FOR CONTESTANT: It is pretty important to show there was a divorce or the first wife is dead.

By the COURT: It is received for what it is worth. Which do you claim, this is the first or second wife?

Mr. RYAN: The second. The first, but the second was
688 divorced. There was a divorce between them. Petition filed January 12th, 1874.

Petition read.

Objected to, as the decree of the court is all that is necessary.

By the COURT: It isn't necessary, but I will allow the gentlemen

to offer evidence in the form and manner they desire. If they desire to read it, they may read it.

COUNSEL FOR THE CONTESTANT: I also offer in evidence the record in the divorce proceedings and the order of judgment. I next offer in evidence the Revised Civil Code of Louisiana (reading article 161).

Objected to the Civil Code of Louisiana on the ground that it is not properly proven, and next objected to as incompetent, irrelevant, and immaterial what the law of Louisiana is.

By the COURT: Maybe; I will see. I will receive it for what it is worth. If it is published by the authority of a sister State.

COUNSEL FOR CONTESTANT: It purports to be; also articles 95, 920, 1481, 1483, and 1493.

By the COURT: Give the date he was last here and went away. There is some dispute about it.

COUNSEL FOR CONTESTANT: My witnesses state he arrived in New Orleans about the 17th of November, 1896. I offer in evidence the license issued by the deputy clerk of the parish of St. Landry, State of Louisiana, authorizing the celebration of marriage between Joseph Fabacher and Magdalena Frey, dated July 24th, 1874, together with the act of celebration of said marriage. John J. Morgan, judge of the 13th judicial district court of the parish. Certified under the act of Congress, marked document D. Certificate of marriage dated the 24th of July, 1874.

Objected to as not admissable for the purpose of showing it was filed in Louisiana.

By the COURT: I don't see. The three questions sub-
689 mitted to the jury *are*, first, was the will executed in accordance with the formalities required by the statute? second, was the will obtained by undue influence? and, third, where was the actual residence or home or domicile of the deceased at the time of this will? are all the facts I am going to ask at the time of his death. Those are the questions of fact which I shall require the jury to answer and all I shall ask them. The law I will apply, and I don't suspect after I listen to the arguments on both sides I will be misled a great deal as to what effect the law of Louisiana has. The jury are not going to be asked to pass upon the effect of those laws. There can't be any greater error in receiving unless you manage to fool the court.

COUNSEL FOR CONTESTANT: I offer it to show that he married the woman, Magdalena, who is charged with the divorce proceedings.

By the COURT: On his theory he could not marry and couldn't make this will. I don't decide it, but I receive the evidence.

COUNSEL FOR CONTESTANT: I offer in evidence next the testimony of Mary Ann Shick, taken under stipulation in this case by N. Blossom, Douglas county, State of Navada. I understood it; I think it is Nevada. She is the divorced wife.

Papers marked Exhibit B, Exhibit D, and another Exhibit A. The deposition was read, and the first question objected to was: State everything she knows about her relations with said Joseph Fabacher, deceased.

Objected to by proponent.

By the COURT: If she states anything that is not connected with the issue, we will strike it out.

Exception taken.

COUNSEL FOR CONTESTANT, reading deposition: "I had to get a woman to wait on me, and one morning she was fixing a cup of coffee for me, and Mr. Fabacher told her she better put in poison instead of sugar. After I recovered I came down into the kitchen"——

Objected to by proponent.

690 By the COURT: It apparently bears the construction that he heard it. I guess I will receive that. To my mind it is clear enough.

Exception taken.

Objection entered as to reading of a letter for the reason that the letter is the best evidence.

By the COURT: The letter is the best evidence unless you show that it is lost. It is as to a letter from Magdalena Frey to Mr. Fabacher, which dropped out of his pocket when his wife cleaned his coat. This is under the old chancery practice.

Objected to now to undertake to read the contents of the letter.

By the COURT: That is sustained. That part of the deposition is stricken out.

COUNSEL FOR CONTESTANT: I offer in evidence a duly certified copy of the record of a suit entitled Joseph Fabacher against Lawrence Fabacher, No. 33732, document F, for the purpose of showing that he judicially asserted his residence at that time.

Deposition marked Exhibit E, M. G., reporter.

Certificate that the foregoing and within is a true copy, filed September 5th, 1891.

Objected to as irrelevant by proponent. It is conceded he was a resident then.

By the COURT: It may be received. I think the law is that they may in those cases go back quite a while and trace up the intentions and acts, showing the intention as to residence or change of domicile, etc.

COUNSEL FOR CONTESTANT: The petition is signed by Joseph Fabacher to the honorable judge of the civil district court of the parish of New Orleans. Petition-, Joseph Fabacher; residence, city of New Orleans. Marked Exhibit F.

I offer in evidence the certificate of registration of Joseph Fabacher, of the parish of New Orleans, 3rd precinct, 12th ward, September 1st, 1891, signed.

691 Along with that I offer a duly certified copy of the names of voters voting in the 5th precinct, 12 ward, held the 16th day of November, 1894, on which appears: 153, Joseph Fabacher—number of registration. Marked Exhibit G.

By the COURT: Is it the same man?

COUNSEL FOR CONTESTANT: It may be. The names are identical.

By the COURT: Received for what it is worth. They don't deny but what he voted down there.

Objected to on the further ground that there is no law in Louisiana which makes the registrair or supervisor an officer competent to send out a certificate which is received in the courts.

By the COURT: Possibly, but what is the point in it of the whole matter? It is received for what it is worth. It's unimportant, because they don't claim any domicile here at that time.

COUNSEL FOR CONTESTANT: I offer in evidence a duly certified copy of an act of sale from Joseph Fabacher to Mrs. Josephine Benedict before January 9th, 1895, in which he declares himself to be a resident at this time of New Orleans; document I; also offer in evidence certified copy of an act of sale — Joseph Fabacher to Mrs. Elizabeth A. Pulscenes, dated the 10th day of January, 1895. I offer in evidence an act of sale — Joseph Fabacher to Theodore Broderick, dated the 11th day of June, '95. I offer next a certified copy of an act of donation *inter vivos*, dated the 17 day of June, 1895. I offer next a duly certified copy of an abstract of the assessment-roll of the parish of New Orleans, 14th district, page 120, square 377, sold in the year '95—number of receipt, 1386—in which appears: Entries, 13; name, —; street, —; parish, —; paid November 4th, 1895.

Objected to, as they can't get that in without proof of the assessment-roll.

COUNSEL FOR CONTESTANT: It is duly certified, under an act of Congress, by the secretary of state, showing to whom it was assessed.

692 Objected to, as there is no statute that permits the assessor to certify to the assessment-rolls. They have to come into court like other people.

By the COURT: It wouldn't be admissible if it was a foundation of the defendant's title.

COUNSEL: There is no evidence to show for *the* purpose it is made.

By the COURT: It is in the nature of a declaration. I don't receive it as evidence in the way you seem to think. I receive it as a statement made by the deceased.

Objected to by proponent. That is the point under the assessment law of Louisiana, and it is up here. He receives at certain times of the year notice to make a return of his property. If he doesn't, there is no penalty which follows, except he is at the mercy of the assessors.

By the COURT: I am not receiving it as a foundation for attack.

Objected to by proponent, as it is not a declaration made by Mr. Fabacher.

By the COURT: It is this, at least—a declaration made by an official of the city of New Orleans as to a certain fact. It goes for what it is worth, the same as a declaration by a clerk of the Leland hotel or the Palmer house that he saw him there at a certain day. Marked Exhibit M.

COUNSEL FOR CONTESTANT: I offer in evidence the assessment-roll of the parish of New Orleans for the year 1896: Name, Joseph Fabacher; 1716 Calhoun street, residence; assessment, $500; for

household goods, furniture exceeding $500 in value, including books and all movable property and chattels, $500.

I also offer in evidence assessment-roll, city of New Orleans, 1895: Property assessed at Aliene street at $9,500; horses and mules, $150; carriages, $100; household furniture above $500 in value, jewelry, $200.

I offer in evidence receipt for the payment of taxes in assessment-roll, parish of New Orleans, for the year 1896: Residence, 1716 Calhoun St.; household furniture above $500.

693 I offer in evidence assessment-roll for the year 1897, together with the certificates, etc.: 1716 Calhoun street, household furniture over $500, including books, etc., $500. This receipt shows receipt of State tax in the parish of New Orleans for the year 1896: Received August 24th, 1896, of Joseph Fabacher $3.45, amount stated.

COUNSEL FOR PROPONENT: Does it appear who paid it?

COUNSEL FOR CONTESTANT: Furniture and so on exceeding $500; August 24th, 1896; true copy. Tax, $3.45, was paid on assessment, on last assessment, on furniture by Theodore Broderick. This certificate of tax to the name of Joseph Fabacher, personal property described amounting to $10 upon other property, together with the certificate from the secretary of state. He was at the time of signing comptroller of the city of New Orleans, having been duly elected. I believe the writing is genuine.

I also offer in evidence another tax-receipt certificate. Name, Joseph Fabacher; for personal property, amount, $19; paid for the year 1895 in the 14th assessment district.

I also offer in evidence certified copy of abstract from original in the possession of the jury commissioners, showing Joseph Fabacher was summoned to appear before the jury commissioners on January 6, 1897, and reported excused, being 72 years old; authenticated according to the act of Congress, document V. In this connection I offer the act 170, the acts of June assembly, State of Louisiana, approved July 12th; act in relation to jury commissioners and their duties.

I also offer act No. 27, approved June 20th, 1890, entitled An act to provide for exemption from jury service of all persons over 60 years of age.

I also offer in evidence certificate of the board of health, record of births, marriages, and deaths, parish of New Orleans; death of Joseph Fabacher, signed by Henry Lenaus, parish of New Orleans. In this connection I offer act 80, approved April 20th, 1877.

Objected to by proponent that entry on the certificate of the board to show the declarations there made as to residence, etc., as incompetent evidence.

694 By the COURT: No; it don't prove it. It proves he is dead. Exception taken.

COUNSEL FOR CONTESTANT: Where there is a public statute requiring certain things to be done and certificate filed in accordance with that the statute makes it a *prima facie* proof of the matters required to be stated in the certificate.

By the COURT: It only states what you claim—that he died at such a time and was residing at such a place.

COUNSEL FOR CONTESTANT: I offer in evidence the record of the succession of Joseph Fabacher, together with all the proceedings, No. 52941, civil district court, parish ——, division B.

Objected to by proponent for the reason that it is an attempt on the part of the contestants to go into the courts of Louisiana, alleging the domicile of the deceased was in Louisiana, and asking for letters of administration, when she is herself the contestant; in other words, making evidence for herself after the death of Joseph Fabacher.

By the COURT: There was some property in that State. They would be entitled to administration upon that. I think we can assume the executor will go down and attend; presumptively it will give them the right to administration. I will let them put it in.

Exception taken by proponent.

COUNSEL FOR CONTESTANT: First is petition setting forth that Antounette Thorman, joined and authorized by her husband, — that Joseph Fabacher died such a day; that he left property in the city of New Orleans, and, among other things, that she be appointed administratrix of his succession, and that a notary went to take an appraisal of the property situated at 1716 Calhoun street.

By the COURT: What do you do with this law, which is a comity of law, that the court -- first obtains jurisdiction retains it, and no other court will entertain it if so informed? It is received for what it is worth.

695 COUNSEL FOR CONTESTANT: The next part of the record shows that this administratrix filed a suit and took out what is called a writ of sequestration, claiming the estate, and gave the necessary bond. It shows there was sequestered a piano, table cover, rocker, three chairs, etc.

Objected to for the reason that the inventory is entirely an *ex parte* proceeding, not conclusive that those things were the property of Joseph Fabacher, and not conclusive in regard to any fact except that an administratrix or the person pretending to act had taken an inventory and claims it was properly done.

By the COURT: It is only received for this purpose—as tending or having a bearing, as they claim, on the question of domicile, in that it appears there were a great many household articles, etc., naturally used by a man who had a home there in New Orleans—the only object I will consider it for.

COUNSEL FOR PROPONENT: We concede the law to be that he may have two residences, but one domicile. He may have a winter residence and a summer residence.

By the COURT: There is no doubt about that, and the inventory for Joseph Fabacher is received for the purposes I have stated.

COUNSEL FOR CONTESTANT: I offer deposition of William C. Keely, taken in Chicago under stipulation of opposing counsel.

Court adjourned to 9 o'clock, January 6th, 1898.

COUNSEL FOR CONTESTANT: I offer in evidence a statement of the

personal property subject to taxation in the county of Waukesha, State of Wisconsin, for the year 1896, as appears from the return of the assessor; total valuation, $90. There is nothing under the heads of notes, bonds and mortgages, and other securities for debts due or to become due. Exhibit B B, M. G., reporter.

I offer in evidence deposition of William C. Keeley, taken before A. L. Crook, a notary public of Cook county, State of Illinois, on the 15th of July, 1897.

696 COUNSEL FOR PROPONENT: There is a question of signature.

By the COURT: Any objection as to that fact—the general rule is the party appears and waives any objection unless made at the time. You may read it. I can't tell until you read it.

COUNSEL FOR PROPONENT: The register was offered in evidence and the deposition is not complete without it.

Objected to by proponent because there is a serious dispute of this very signature. It afterwards appears it was not in Joseph Fabacher's handwriting.

By the COURT: So far he swears it was in his handwriting.

COUNSEL FOR PROPONENT: The books have been offered in evidence and they are not here.

By the COURT: Go on. I don't see any denial of the signature—any particular dispute. If his testimony depended absolutely upon reference to those books, your position would be correct, but it don't. He testifies of his own knowledge, without regard to the books, that he registered and was assigned a room.

COUNSEL FOR PROPONENT: The books are part of the deposition. It was agreed that he should make arrangements to bring them here.

By the COURT: The deposition is received. Marked Exhibit Z, M. G., reporter.

COUNSEL FOR CONTESTANT: I offer in evidence the testimony of Mrs. Pauline Gross, of the city of Covington, State of Kentucky.

Objected entered as to what anybody else said.

By the COURT: Hearsay is not evidence, of course, and the widow can't make a domicile for a man. I guess I won't receive what the widow said. In fact, it is not very important. In the cross-examination there was an objection to what the wife said, and it was not read.

Objection entered as to the answer not being responsive to the question asked where Joseph Fabacher died.

By the COURT: The deposition is received. Marked Exhibit X, M. G., reporter.

Exception taken.

697 COUNSEL FOR CONTESTANT: I offer in evidence duly certified copy of the power of attorney from Joseph Fabacher to Lawrence Fabacher, dated May 23rd, 1887.

Objected to by proponent.

By the COURT: It is received for what it is worth. Marked Ex. 2, J. H. S., reporter.

Counsel for contestant states in open court that the contest is not made on the ground of undue influence.

COUNSEL FOR PROPONENT: We claim the fall and winter of 1894 he formed an absolute intention of changing his domicile and sold his property in the fall of 1894, and in the spring of 1895 changed his domicile from New Orleans to Waukesha; that the moment he came that spring—I think it was June 20th, 1895—his domicile was complete here.

MICHAEL MEYER, being sworn for the contestant, testified as follows:

I am a carpenter and contractor and reside in this city. I knew Joseph Fabacher in his lifetime. I got acquainted with him when he bought that property up there and spoke of building his house in the fall of 1893. I built the house for him; that was the one he lived in while here. I made a contract with him, but it was late in the fall of 1893 and the building was completed next spring. I did not see him frequently during the time I worked on that building. He went away before I started to build it. I saw him when he came back, in the spring of 1894. I had no particular conversation with him when he came back with reference to that building. He said he was putting up that building to live in. I don't know whether he really mentioned what for he was putting it up. He told me in the fall before he started the building that he didn't want to put to- much money in the building; he only wanted to live here a couple of months some time during the summer season. In the first place he wanted to build a house like Mrs. Haertel's, on College avenue, and I gave him the price for that and after-
698 wards he and I went up there to the place, and he said that he wanted a building two feet higher and he would give me, I believe, an extra $75, which made it $2,500 in all and to complete the building. I told him it wasn't quite sufficient to put on the extra two feet in height and some other little things. Then he told me he didn't want to put too much money in the house, because he didn't intend to live there, only during the summer months. The $75 was included in the $2,500. This conversation took place shortly after he bought the lot and signed the contract, in the fall of 1893. He moved into the house either in the latter part of June or July, 1894.

Q. What kind of an ornament was that place- above the main door of the building?

Objected to by proponent.

By the COURT: I don't know. See what it was. You can move to strike it out.

A. That little moon—half moon and star. I suppose it is called a crescent; that is what Mr. Fabacher called it. I put it up at his request; he sent a little sketch of it from New Orleans and I had it made in Milwaukee and he told me to put it there. I agreed to build the whole building for $2,500. (Witness shown building con-

tract.) That is the original contract which was entered into between Mr. Fabacher and myself. This is a duplicate; we had two copies.

COUNSEL FOR CONTESTANT: I offer this building contract in evidence.

Received; marked Exhibit A A, M. G., reporter.

I did not put in a furnace in the house; I think Mr. Haertel did, if I remember right. It was put in the next summer; the first summer he lived in it. I saw it there during the summer of 1894.

Cross-examination:

When I built this house for Mr. Fabacher I built it after the style of Mrs. Haertel's on College avenue, only it was two feet higher. I built this house in the usual way houses are built in this climate, constructed for winter as well as summer purposes. I built this in the spring of 1894. Mr. Fabacher made many improve-
699 ments after that. He built a stable. I built a part of it. It was like ordinary barns built here, as warm as ordinary barns in this climate; there was no sham or skeleton about the house. It was regularly constructed and suitable for all climates. I do not remember for certain whether I had any particular conversation with Fabacher after the fall of 1893 about his residence or how long he was to live here. I think he told me once that he didn't intend to live here in the winter, but I am not positive of it. I think it was in the summer of 1894. What he intended to do after that I don't know. He improved and added to the house after the completion of the contract; he built what is called a summer kitchen and wood-house, and put in a furnace the next spring and the summer of 1894. I believe he stayed here late in the fall of 1894. I can remember that he went away a short time before the holidays. I know one fall he said he had to go home early—I don't remember whether it was the first or second—on account of business. He told me he wanted to start one of his sons up in business in New Orleans. I don't know whether it was in 1893 or 1894 *or 1894* or 1895. The improvements that he made afterwards were constructed in the usual manner, same as buildings are built in this climate.

Redirect examination:

When we started building this house Vos Putney and Elmer Putney and myself and a nephew of mine, George Meyer, worked on it; in 1894 we put a little addition to the house; on the rear of it, a kind of a wash-house or wood shed or summer kitchen. I put in screen doors and windows in that house.

Recross-examination:

I did not build storm doors; my son built them, and also blinds.

700 W. L. MEYER, being sworn for contestant, testified as follows:

I am a resident of the city of Waukesha and a son of Michael Meyer, the gentleman who just testified. My business is that of a carpenter. I was acquainted with Joseph Fabacher in his lifetime. I first met him at his place upon the hill here. I first became acquainted with him after the first of May, 1894. I was employed in building that house. I worked with my father. I saw Mr. Fabacher around there during the spring of 1894, after the house was completed—that is, when we were doing extra work. We built a barn and rear kitchen and wood shed. We had a conversation with Mr. Fabacher. I know he said his home was at New Orleans; he was here to spend the summer months. He said he couldn't stand this climate in the winter time; it was to- cold. I cannot tell what led up to this conversation we had about his home. I was employed as a carpenter in building there when these conversations took place. He proposed to take me to New Orleans with him; this he did in the spring when we worked there, but he never said anything after that. I can't remember the words that he used. I can't remember much of it any more. The substance of it I have already stated. This talk took place during the time he was putting up the building in 1894; he did not say that in the winter he was going to take me to New Orleans; he did not tell me a great deal about his establishments at New Orleans; he told me he had a restaurant there; that he and his sons or one of his sons were running the restaurant. I was ordered to put up that crescent by Mr. Fabacher some time in 1894. I did not make it; it was made in Milwaukee; it is a half moon; nearly a half moon and a star between the horns; it is called a crescent. I think Mr. Fabacher said it was an emblem of the State of Louisiana.

Cross-examination:

I was a witness in the trial of this case in the county court and there testified.

Q. Wasn't this question asked you, "In what terms did he
701 speak of the house, as to the purpose to which it was being used?" and didn't you answer as follows: "I understood it was a summer home"?

—. Yes, sir; I think so.

Q. Is that the way you want to be understood now?

A. Yes, sir.

Q. Wasn't the first, "Did he say anything in reference to that? A. No, sir; I don't know as he did." Is that the way you want to be understood?

A. I don't quite understand now.

Question read.

A. I don't know. I think he did say something, but I don't know what it was.

Q. I ask you this: Did you have any conversation with him in

reference to his home and where he lived and did you answer, "No, sir"?

A. No, sir.

Q. You didn't?

A. No; I don't think I did.

Q. If you did, was it true or not?

A. I did have conversations with him with reference to his home.

Q. If you answered so in the county court, it wasn't true?

A. I don't think it was. I don't know as I answered it that way.

Q. Then I asked you: "You never had any talk in 1894? A. No, sir."

A. That isn't true. I don't think I testified that way, So far as I know, this house was constructed for all seasons of the year. I knew very little about the construction of the house, as I did not work on it until the spring of 1894. I built the barn and wood shed in 1894, which were constructed as such buildings are usually built. I don't remember of seeing a dozen of these emblems before called star and crescent. I think I have noticed them in flower beds in the parks. I don't remember seeing any just like them. I don't think they were just the same.

W. G. FRYATT, being sworn for the contestant, testified as follows:

I am a painter and reside here in the city of Waukesha for about 16 years. I was acquainted with Joseph Fabacher in his lifetime; met him up at his house on the hill. I was employed by
702 Mr. Meyer, who built the house, to paint it. I saw Mr. Fabacher about the building while I was there engaged in painting. I had the house about finished before he came and I did some extra work for him after he got there. It was in the spring of 1894, I think, that I painted this building. I didn't have very much conversation with the old gentlemen. He had some blinds and he wanted the blinds all painted and he said he was going to close the place up in the winter time. He said it wasn't his home; that he lived in New Orleans or off somewhere, and he asked me what it would cost to paint the blinds and I told him and I did it. One of my men that had been engaged in painting the blinds spoke of going to California and he went that winter and the next winter, I believe. Mr. Fabacher asked him to call on him if he went by the way of New Orleans. I happened up there and heard him say that. He said that he should call on him at his home in New Orleans; that he had quite a fancy home and would use him well if he called as he went through. I can't recollect anything else bearing on this question.

Cross-examination:

When Fabacher asked the man to call on him I would not be sure whether or not he used the word home at all. It was understood, I know, it was his home. He just said to call on him at his home.

I think he did use the word home. I testified as a witness in the county court when this case was tried before.

Q. Wasn't you asked this: "Do you remember any other conversation subsequent or prior to the one you have just related?" and didn't you answer thus: "He was talking with one of the men one day and he asked the fellow to call and see him"?

A. Yes. This man was going to California and Fabacher asked him to come by the way of New Orleans and call and see him and that he would used him white, as the old man had taken quite a liking to him. I wouldn't say whether the word home was used or not. It would be natural for me to use it. He did say his home was in New Orleans when he had the blinds painted. I remember that part.

703 Q. He didn't say when this place was closed in the winter time, because he didn't live here, that his home was somewhere else?

A. That is what he meant.

By the COURT: Answer the question.

Q. Is that what you testified to in the lower court?

A. I don't know whether it is.

Q. Is it a fact that he used the word- New Orleans at all?

A. I don't know. I wouldn't say.

Redirect examination:

I had more than one conversation with Mr. Fabacher. He said he wanted his place closed up in the winter time, because I don't live here; my home is somewhere else. I presume he did talk to me outside of what I have already stated regarding his home. I never saw him come from New Orleans. I don't know whether he told me that he came from there or not.

AUGUST JACOBSON, being sworn for the contestant, testified as follows:

I am a merchant, and reside here continuously in the city of Waukesha for the last twenty-seven years, and have been in business here for that length of time. I was acquainted with Mr. Fabacher in his lifetime, ever since he came here to Waukesha. I visited he and his family once or twice. I had a conversation with him at his house shortly before he left here in 1896 for New Orleans. In that conversation I told him I intended to go *go* that winter to attend the Mardi Gras at New Orleans, and he told me if I should come I shouldn't go to a hotel, that I should come right to him. I don't know that he said his house or his home. He said I should stay with him, and he repeated this conversation before he left. He came to bid me good-bye in the store, and told me to be sure and come. I couldn't tell whether or not he said home or house; he said he had plenty of empty room. I had a good many conversations with him during the summer of 1896. I saw him mostly every day and talked to him. He did not say anything in reference
704 to where his home was. I was acquainted with the young lady that was here with — and with his son Jakie; they

lived here with him. They were the only children that I knew personally. He spoke to me in regard to his establishment at New Orleans. In 1896, he said, he had sold out to his son, and had nothing to do with the business any more. He told me what a large business he used to do there. He said that he came here for his health. I couldn't tell when he first made that statement, and I cannot swear that *that* he ever repeated it to me. He said he felt very well here, that he liked the place, and he repeated that very often. (Witness shown photograph of the deceased.) That is a likeness of Mr. Fabacher.

COUNSEL FOR CONTESTANT: I offer it in evidence.
Marked Exhibit No. 3.

According to my judgment, that is a pretty fair picture of the deceased. He was a man that would weight about 225 pounds, pretty active, and very talkative. I have seen him go more in a carriage then I have seen him walk. He would go around the city here most of the time riding. He walked like a man of his age would ordinarily do. I visited twice at his house here in Waukesha with my wife. I did not pay any particular attention to the furniture in the house. I don't know whether or not there were any family groups representing member- of his family in his home here; I saw no such pictures hanging on the walls of the house; I took no notice, and was shown no album. They had no family relics there that I know of. There is no other fact or circumstance beyond what I have stated that bears upon this question. In the course of my business I meet a great many people that come here as summer guests.

Q. You may state in your best judgment what number of people come here during the summer months.

A. I couldn't say that.

Objected to by proponent.

By the COURT: What has it got to do with this question?

COUNSEL FOR CONTESTANT: To show that it is a summer resort—a place where people are in the habit of coming and going.

705 COUNSEL FOR PROPONENT: It is conceded the city of Waukesha is a summer resort and noted for its so-called mineral springs. I should judge that there is during the summer, between going and coming, about four or five thousand people that come here. Some of them come one year and stay a couple of years, and — away and come again. I remember some that have come here continuously for quite a while; some of these guests have residences here in the city of Waukesha and use them during the summer season. I do not know of any that return in the winter time.

Cross-examination:

I do not know many that have summer residences here. Mr. Fabacher told me that he had been engaged in a restaurant business, and that his sons were still engaged in it, and that he had rooms in connection with the restaurant, where they kept people.

When he invited me to call he did not say whether to call at these rooms; he said at his home or his house that he had got plenty of rooms; he told me there was a hotel connected with it. In the fall of 1896, when he was going away, he told me that he was coming back again and that he expected to come back early.

Q. Did he also tell you that he would not go back; he liked it here, if it wasn't for his wife wanting to visit the children?

Objected to as leading. Objection overruled, and exception taken.

A. He told me: "I like it here," he says, "and I would stay longer if it wasn't for mamma (meaning Mrs. Fabacher); that she wanted to go back to the children."

He said he was coming back early the next spring. He spoke to me about voting and said he was a Democrat, but he wouldn't vote for Bryan; afterwards he said that he voted here in Waukesha.

JAMES POOLE, being sworn for contestant, testified as follows:

706 I have resided here in the city of Waukesha a little over 55 years. I knew Joseph Fabacher in his lifetime. I met him here in Waukesha; he roomed a little while at our house; I think it was in the summer of 1893; I think it was about two months; my home is near the National hotel. I met him several times on the street after he left my place. I rode with him a good deal in the buggy. I did not visit at his home on the hill; I have been up at the house, but I was never in the house. I met him in different parts of the city, sometimes in one place and sometimes in another. Before Mr. Fabacher built the house he came to me and wanted that I should superintend the building of the house, and I didn't want to. I told him that Mr. Meyer, the carpenter, was a good, straight, honest man; if he hired him to build the house he wouldn't need anybody to superintend it. I asked him if he was going to move his family up here, and he said No, only summers; he wanted a summer residence. He says he wanted a barn to keep his horses and thing- in and have his own cooking done just as he wanted it. He did not at that time tell me the purpose for which he was to use the house or how he was to use it. He said he was going to move up here summers; that he wanted a summer residence, and wanted a barn to keep his horses in. I talked a good deal with him about one thing and another. I remember one particular time I rode with him in the buggy and he said he was going over to the cider mill to buy some cider, and I told him I was going to get cider, but it was too early to get it; he had better wait until along towards fall, the cider would be better and the apples would be riper. Well, he says, "I wan't get mine until you get yours." I asked him how much he was going to get. I don't know but he said one or two barrels, or one or two kegs, or something of that kind. I says, you can't drink as much as that; but he said he would take it back home to New Orleans with him; then I asked him if he was going to take the horses back, and I think he told me he was going to take them all back but one. I am not certain

about that. This was along in the fall of 1895 or '6; either
707 the last or second last year he was here. I am not certain about the dates; I don't remember. This talk was had with him some time before he left. I don't remember any other conversation in connection with the matters I have testified to; we had a good deal of conversation, but I can't remember but very little of it; it didn't interest me.

Cross-examination:

The conversation I had with Mr. Fabacher about the building was before he commenced to build; I cannot be positive about dates. There was considerable conversation after he got the house built and moved into it. Maybe he was living there in 1894; it might have been that year; I certainly don't know.

ANNA POOLE, being sworn for the contestant, testified as follows:

I am the wife of James Poole, who just testified; I was acquainted with Joseph Fabacher in his lifetime; he made his home at our place in 1893, either the last of July or the first of August. Early in the summer, as we call it for spring visitors, they engaged rooms at our house. Mr. Fabacher had his wife and son with him; they remained about two months, I think; after leaving our place they went to the National hotel. I was quite well acquainted with Mr. Fabacher and his family by meeting them at the house. After they left our house his wife called very frequently. He did not come with his wife; I think he called twice alone. I returned the visits of Mrs. Fabacher and called on them three times in 1894 and 1895. I saw Mr. Fabacher shortly before his return to New Orleans in 1896, and had a conversation with him at that time. He was sitting in the buggy at the National hotel and he called me and told me Mr. Haller's people, friends of ours, had sent word to them that their son was much better. I then asked him to call and see us, and he said he took a fall and wasn't able to leave the buggy; he couldn't get out of the buggy. He often called when I met him on
the street at the post-office to tell me about those people from
708 New Orleans. He spoke of his home in New Orleans; he was speaking about going back home, back to New Orleans in the fall. The reason why he was going was that it was so cold; he couldn't stay here during the winter. This conversation I have just related must have taken place a week or two before he left, in 1896. He said that he came here for his health. He often spoke when he was building his home about our coming to visit them at their home here, and I often spoke, saying that it was a little too far to walk, and he said, "I will come down with the carriage after you at any time," but I never rode with him. I was there three times. I don't remember that Mr. Fabacher ever asked me to visit him at New Orleans; he said, "If you ever come to New Orleans, call on us." He told me what kind of a residence he had down there. Mrs. Fabacher gave me some fruit that was brought from there, and spoke of it growing in New Orleans, on their homestead.

I said it was a good place to raise fruit, and he said, "Yes; we have got an elegant home."

At the time I saw him at the National hotel he told me he was coming back to New Orleans; he said nothing about that when I saw him at the post-office; he spoke to me with reference to his house here in Waukesha; that they had a nice home, so much more comfortably situated here than he was there. I don't know that he spoke of using his home here for any particular purpose; he spoke of it here as his summer home.

Cross-examination:

I do not remember the details of all the conversations had with him; it was not of any very particular interest, only for the passing moment. When he sat in the buggy in front of the National hotel he said something about his son going to California, and that he was going to meet him, I think, in Chicago. At this time, when he said he was going to New Orleans, he probably said nothing about his home. The conversation which took place about
709 the fruit which he gave me that was from his home in New Orleans took place in 1893, the time he had a home on Prytania street, in New Orleans.

JAMES POOLE recalled:

My wife put me in mind of it when she was asked the question whether Mr. Fabacher wanted she should call and see him if she come to New Orleans. Mr. Fabacher asked me to come and see him at New Orleans. I forgot that when I was on the stand. That was when he went away the last time—when I was talking to him about his horses.

WILLIAM PARSONS, being sworn for the contestant, testified as follows:

I reside in the city of Waukesha. I am engaged in the transfer and livery business. My business partner is Charles E. McCumber. We have been doing business here since 1893. This is my home, and I have lived here 15 years. We moved his people and baggage to the hotel, and I met him at times on the street. I met him frequently during the years of 1893, 1894, 1895, and 1896. In the year 1896 I probably met him every day after he came to stay. He used to come down to the office, and I used to ride over to the National hotel with him, and he used to come there every morning. He called at my place of business shortly before he was going back to New Orleans in 1896. I had a conversation with him at that time. Probably two weeks before he went back to New Orleans he came down to the office one day and wanted to make arrangements with me to keep his horses during the winter. He had three horses he wanted to leave and one he wanted to sell if he could get a certain price for it, and he also wanted to leave a carriage team here. I made a price what we would keep the horses for. We had some other talk, and he concluded that he would take the carriage team

back to New Orleans, and wanted to know what I would charge to furnish a team next summer when he came back, and he would leave the carriages. He wanted me to make a price on furnishing a team. He said the short time he stayed up here he thought he would send the team back if he could make satisfactory ar-
710 rangements; that he would not bring them with him the next summer. I boarded that team and received instructions from him to sell one horse. I did not sell the horse. I did not have any conversation with him in regard to his home more than he spoke of New Orleans as his home. I cannot say that he said anything in particular about his house here on the hill. He spoke of it as the place where he came to spend the summers. In speaking of New Orleans at the time he would be preparing to go back he spoke of it as his home. He often — these statements to me in casual conversations. I remember that this conversation took place in 1896.

Cross-examination:

The question of his home was not important in any conversation I had with him. It was all casual. He never discussed, as a matter of fact, where his home was or where it was located.

Q. The horses and carriages you kept in the winter of 1896 and '7—they were here at the time of his death?

A. Yes, sir.

Redirect examination:

After the death of Joseph Fabacher I loaded the horses and carriages on a car at the Wisconsin Central depot, and I supposed they were shipped to New Orleans. I don't know to whom they were consigned. I don't know who shipped them. I think they were shipped in the latter part of April or the first part of May. That is my remembrance. There were three horses which I kept through the winter and one that was kept at Mr. Weber's. Four altogether of his horses were put into the car.

CHARLES MCCUMBER, being sworn for the contestant, testified as follows:

I am the partner of Mr. Parsons, who was last on the stand. I was acquainted with Mr. Fabacher. I met him first at the National hotel, in this city. I also met him at our office and on the street. I think I first met him in July or August, 1894. I met him during the years 1895 and 1896, during the summer, quite frequently. I met him two or three times a week; possibly three or four time-. I couldn't say as to that.

711 Mr. Fabacher spoke of New Orleans as his home; he made this statement to me frequently. The conversation concerning his home was had at the National hotel; possibly rode over with him; I couldn't say, but I talked with him there and talked with him about his living here during the winter. He said, "No; I can't; when it gets cold whether I have got to get back home."

This, I think, was in 1896, at the National hotel. When speaking of this place, my recollection is that he spoke of it as his summer home; I am not positive as to that. I had a conversation with Mr. Fabacher shortly before he returned to New Orleans in 1896. I met him, I think, at the National hotel this time. He told me he was going back home; he had made arrangements with Mr. Parsons to keep his horses during the winter, and he wanted to sell a horse at such a price. He said nothing to me about shipping the horses and carriages down. He did not relate that part of the conversation he had with Mr. Parsons in regard to shipping the horses and carriages. That is all of the conversation that I remember pertaining to this matter.

Cross-examination:

I remember that Mr. Fabacher at one time spoke of coming back early the next season; that was the last fall he was here. I suggested to him that he ought to stay here all winter. He never told me that this was his home. I think at one time the question of where his residence was or where his home was — under discussion. He was speaking of his home, and he spoke of it as New Orleans, and this as his summer home; I don't know what for. He didn't say in so many words that he wanted me to understand that New Orleans was his winter home. It wasn't important *ot* me in any of our conversations where his home was. It might have been brought about by question of his home being under discussion; I am not positive; it was simply a casual remark. I took no particular notice because he said that.

712 JULIUS KALK, being sworn for the contestant, testified as follows:

I live here in Waukesha and was acquainted with Joseph Fabacher in his lifetime. He built a house on the hill and I worked for him about the house, grubbing out trees and leveling off the grounds. I worked for him the year he built the house and also two years afterwards. Mr. Fabacher told me that he built this house for the summer, and in New Orleans he had his home. He made this statement to me the first year he built the house and also the following year. He did not say anything to me about his home the last year.

P. HOULAHAN, being sworn for the contestant, testified as follows:

I have been a resident of this city continuously for 13 years. I first became acquainted with Mr. Fabacher in June, 1895. He was going to our church at that time, and he wanted to get a pew from the church, and I gave him a part of mine—rented it to him—and after that he wanted some gravel hauled up to the drive around his barn, and I hauled that up there, and in the talk around there he told me that he had a lot in Hadfield's addition, which he sold, as his wife did not like it, and that he bought this place up here for the summer resort. He thought he would get fresh air round here;

it was a healthy place to live. I remember the transaction which took place between myself and Mr. Fabacher relative to the sale of a sorrel horse in 1895. He said that he could not manage the horse, and that the coachman could not go out with the family and attend to this horse also, and I told him I would take the horse and drive it for him, and I took the horse and drove it for about a couple of months. He wanted to sell the horse, and put his figures on it at $135, and there was a man said he would buy the horse provided he sold another. He had to match the horse he was going to put in with him, this one, and I went and saw Mr. Fabacher about it, and he told me not to sell it unless I got $140, and some time after that I found out I couldn't sell it. He said, "You want some
713 commission," and he said, If you can sell it for $140 do so, but I couldn't sell it for $140, and along towards fall he wanted to sell it for $75; so I couldn't sell it for that, and a regular carriage he had that he bought in Milwaukee, so he said if he couldn't sell it he would ship the horse home.

Cross-examination:

I won't be positive whether he said home or New Orleans; as a general thing he always used the word home; I wouldn't be positive that he used it in this instance.

ELMER PUTNEY, being sworn for the contestant, testified as follows:

I am ex-chief of police of this city and have resided here for 32 years. I knew Joseph Fabacher in his lifetime. I got acquainted with him when I was working on his house across the river with Mr. Meyer. I think that house was built in the fall of 1893 and the spring of 1894; I think that he moved into the house in the spring of 1895; I think he lived in it summer seasons prior to that. I heard him tell Mr. Meyer he was building it for the summer residence. I didn't have any conversation with him in regard to his home personally; I was present when he and Mr. Meyer were talking about it, and Mr. Meyer asked him if he intended to make this his home, and he said: "No; this is my summer home; my real home is in New Orleans." I think this was in the year 1894; I don't think I had any conversations with him in 1895 or 1896; the conversations I referred to were in 1894.

CHARLES TAYLOR, being sworn for the contestant, testified as follows:

I was acquainted with Joseph Fabacher in his lifetime; have lived in the town of Pewaukee for the last twenty years; lived about a mile across lots from Mr. Fabacher; we were quite neighborly. He purchased hay and oats, chickens and butter, and some
714 eggs and wood from me. I had a conversation with him along in November, 1896; he wanted me to board a span of bay horses through the winter of 1896 and 1897; at this time he had a sorrel horse that he spoke about selling; might have been a

month or two before we had this conversation about wintering the horses. I remember that when he was going away he shook hands with me and stated that he was going home; at different times he spoke this way to me.

Cross-examination:

I knew where his home was in Waukesha. When he went away in the fall of 1896 he told me that he was going to New Orleans for the winter, and that he was going back again in the spring, and that he wanted me to keep his horses for him over the winter. This conversation took place about the middle of November, I think.

Redirect examination:

Q. To you he said this was his home?

Objected to. Objection sustained. Exception taken.
COURT: He can give the facts; court and jury will adduce from this their opinion. He can't give an opinion.
Exception taken.

In November, 1896, when Mr. Fabacher shook hands with me and said he was going to leave Waukesha, he said he was going back home to New Orleans. He spoke to me about selling the sorrel horse which he had bought some time before.

Recross-examination:

This sorrel horse was the one that the coachman could not manage very well, and he wanted to know if I couldn't buy the horse. He did not tell me he was going to New Orleans to see his children; He told me that they lived there in New Orleans, but he never said anything about visiting them.

CHARLES MCGOVERN, being sworn for the contestant, testified as follows:

I have resided here in Waukesha for nearly 19 years, and am engaged in hauling freight and the ice business. I knew
715 Joseph Fabacher in his lifetime. I hauled some freight and furnished him with ice. I don't know that I could tell without looking at my books what years I hauled freight for him and furnished ice. The freight I took to his house consisted of wines and liquors mostly and some groceries and I believe one stove. I got this freight from the Wisconsin Central depot and the St. Paul depot; it came from New Orleans. I think he got some from Ohio; I couldn't say that it generally came from New Orleans. I never met him very much, only in a business way. He said he employed a great many men sometimes at New Orleans. I cannot remember that he ever said anything in regard to his house here at Waukesha, but we would haul boxes of liquors shipped here and wines and would take the empty boxes to the depot. A man by the name of George Tompkins worked for me and delivered the cases to the

depot. I think they were shipped back to New Orleans. I don't know where they were directed to. I don't remember just what years we hauled freight to and from his house here; we did some, I think, during the years of 1894, 1895, and 1896. I am not positive about 1896; that is the last year. I don't remember that he told me very often where this freight came from, but once he told me he had some coming from New Orleans. Mr. Tompkins brought the freight and always attended to such business. He may have told him and Mr. Sperber word, leaving information with him about any transaction of that kind. I do not remember of hauling boxes from the depot myself more than twice. The first year he was here he got quite a number. That was in 1894. He got some in 1895, but not as much, and he also got some in 1896. Mr. Tompkins is still employed by me and is somewhere here in the city.

Cross-examination:

I hauled some furniture for him back and forth. I never hauled a great deal. I think the transfer hauled that for him.

JOHN WOLF, being sworn for the contestant, testified as follows:

716 I am a carpenter and reside here in the city of Waukesha, and have for the last eight years. I knew Joseph Fabacher in his lifetime and worked for him the last two or three years; I done most of his work. He had a number of conversations with me in regard to his house up here. He said it was his home; that he made his home here in the summer, and in the winter time that he made his home in New Orleans. He made this statement to me the year we were putting up the horse barn for him. He told me

he made his home here in the summer

once that I know of that he would stay here as long as he could, and after it got cold he would come back to New Orleans, but I can't fix definitely in my mind when that conversation took place. I did not have much of any conversation with him in 1896. I remember one time having a conversation with him, and he told me he would stay as long as he could stand it. This was in 1896. He said he would go back to New Orleans. He said that he came here for his health.

Cross-examination:

He spoke of liking this place and the climate and people and all the surroundings. He stated that they had very bad water down in New Orleans and told me that he enjoyed better health here than he did there; that he felt a good deal better. I do not remember that he spoke of voting here. He said that he would stay here as long as he could stand it, and then that he would go to New Orleans.

CHARLES BERGELER, being sworn for the contestant, testified as follows:

I am a resident of the city of Waukesha, and have lived here for 34 years. I knew Joseph Fabacher in his lifetime. I think I can

recall the conversation had with Mr. Fabacher relating to the question of his home or residence. I understood at one time that he had a horse for sale—along about the fall of the year, when he was going away—and I went up there to see him—I had frequently went up there to the house—and I asked him if he wanted to sell the horse. He said he did, and I asked him what he wanted for it,
and he told me, and he had his price pretty high, so I didn't
717 press the matter very much. I told him I thought it was a
little too much for it, and he said that if he had him down home he wouldn't sell him for that, and I dropped the matter. This conversation took place in the fall of 1895. I don't think the subject of his home came up in any subsequent conversations. He often spoke of New Orleans and spoke of his home.

Cross-examination:

I got an understanding that horses were worth more in New Orleans than here, and that if he had the horse down there he wouldn't sell it for that price.

FRED GASPAR, being sworn for the contestant, testified as follows:

I am a resident of the city of Waukesha and have resided here the best part of my life. I was acquainted with Joseph Fabacher in his lifetime. I became acquainted with him the first time in the spring of 1894. During the time I was acquainted with him I was employed here in the furniture business, working for Charles Gaspar. At the time I was working here for Charles Gaspar there was furniture purchased by Mr. Fabacher; it was not at all expensive; it was medium furniture. I couldn't state positively whether or not I had any conversation with Mr. Fabacher in 1895. I had a number of conversations with him during the time I was acquainted with him *during the time I was acquainted with him.* I first became acquainted with him in 1894 or '5—I am not positive—and knew him from that time until his death. He told me that his house furniture was to be put in his summer home, and whether it was to be permanently a home or not I wouldn't say definitely, but he told me that. I went up and place- this furniture he bought from Charles Gaspar in the house over the river and put down all the carpets and hung all the window shades and placed all the furniture.

Cross-examination:

This furniture was put in the house the first year he moved there,
in the spring of 1894. I think I had this conversation with
718 him; it was just after the house was furnished; it must have
been in 1894. This house was furnished about the same as ordinary houses about town—reasonably, comfortable, and substantial, but nothing at all extravagant. I said it was medium furniture, very comfortable, about the average used by people in this town.

FRANK FULLER, being sworn for the contestant, testified as follows:

I reside here in the city of Waukesha for about three years, and am a member of the firm of Constantine and Fuller; have been connected with the business here in Waukesha about eight or nine years. I was acquainted with the late Joseph Fabacher. I think I became acquainted with him in the latter part of 1893 or 1894. Within the past two or three years I had conversations with him regarding his home and residence. The last conversation I had with him was in the fall of 1896 in our office. He called at our office to see about some vacancy permits on the insurance policies, and also in regard to some real estate that he wish- to get an option on. I think it was three or four days before he left. He wanted the vacancy permits put on the policies, and then he said he was going back home in a few days; I don't know that he stated the place. He said he was going back home. We are engaged in the insurance business. (Insurance policies, with vacancy permits attached, shown to witness.) This is a policy of insurance of $1,000, issued to Joseph Fabacher July 7th, 1894, expiring July 7th, 1897, on furniture, and vacancy permit issued the 25th of September, 1894, for 200 days.

Policy offered in evidence and received.

The next is policy 2750, issued to Joseph Fabacher July 2nd, 1894, expiring in three years, to the amount of $2,500 on dwelling-house, 250 frame, shingle-roof horse barn; vacancy permit issued September 25th, 1894, for 200 days. An endorsement on this policy August 10th, 1894, for $280 additional insurance, expiring the same date as the policy. This policy $1350, issued the 7th of October, 1895, running to the 2nd day of July, 1897, $250 frame-roof barn No. 1, 400
on three horses and considerable other property therein
719 mentioned. There was a vacancy permit attached to this policy for the year- 1895, 1896, and 1897; this vacancy permit was issued the 25th of September, 1894, for 200 days; there are no other vacancy permits attached to this policy here, but there are others with this. Here is one, date November 17th, 1896, on policy No. 17, Joseph Fabacher; term, 3 years; expiration, 1897. Permission is given and the insured to have the property remain unoccupied until the 1st day of April, 1897, being agreed on the part of the assured that the property is in charge of a hired servant at all times; no fires or artificial light will be permitted on the premises; it was issued in November, 1896; two last vacancy permits. I don't find any vacancy permit for 1895. This vacancy permit is date- November 17, 1896, to April 1st.

COUNSEL: Now, I offer in evidence these policies of insurance and vacancy permits, referred to by the witness in his testimony, in evidence, marked *Dd* and *Ee* and *Ff*, M. G., reporter.

He said he wanted to get an option on some property here for a friend of his; he wanted to get him located here. I issued the vacancy permits offered in evidence at the request of Mr. Fabacher.

Cross-examination:

He wanted this option on some property immediately across the way from his residence; he wanted to locate a friend here; he didn't say anything about being well pleased with this place. I never had any conversation with him in regard to that. I wrote *this* vacancy permits, as I was instructed, a few days before he left; it is customary for people going away for some weeks to get vacancy permits, and this permit provided for the building to be kept in the possession of servants; we can give vacancy permits to leave the house entirely vacant. I don't think that they asked for — in this permit. I don't know whether a servant remained there or not; it was the understanding or condition of the vacancy permit.

COUNSEL FOR CONTESTANT: I offer in evidence the testi-
720 mony of *of* Rev. Joseph Francis Lambert, of New Orleans.

Testimony received in evidence and read.

I offer in evidence the testimony of Matthias Troye.

Testimony read. Objection during the reading of it. The first objection was to what was said at the funeral. Question was: "Do you remember what was said by any member of the family at the funeral?" Objected to by proponent.

COURT: It depends upon what the answer is.

COURT (examining the book): I guess we won't admit it. It isn't important. It don't touch the vital question. It is a question of conscience more than anything else.

Next question objected to: "Where was Joseph Fabacher's home?" It was objected to by proponent, and the answer was, "In New Orleans." Objection wasn't renewed.

FRANK MCKENZIE, being sworn for the contestant, testified as follows:

I am the acting county clerk of this county, and as such have possession of the tax-rolls of the different municipalities of this county. I have in my possession the tax-roll of the village of Waukesha for 1894. In turning to page 234 of that tax-roll, I find names beginning with the letter F. I do not find the name of Fabacher on that list; no such a name on that list. That tax-roll shows the amount of personal taxes paid by the different residents of the village of Waukesha. I have also the tax-roll for the village of Waukesha for the year 1895; have the same open at page 287, and there find the letter F. I have examined the list and the name of Joseph Fabacher does not appear. I have made a diligent search to find that name on both these records and am unable to find it.

Q. Do you find any in 1896 and '7?

No answer.

Deposition of Samuel H. Gross read.

Objection as to how many men he had known changing their domicile.

By the COURT: Yes; that is objectionable.

Exception taken.

COUNSEL FOR CONTESTANT: I offer in evidence a marriage certificate showing the marriage of Joseph Fabacher and Mary Ann Frey on the 13th day of May, 1850.

Document received in evidence.

721 Deposition of Josephine Troye read.

Deposition of John Koepler read.

Deposition of William Paulfrey read.

The account of the deceased in the New Orleans bank offered in evidence.

Deposition of Jacob L. Baltz's read.

Deposition of Leopold Levy read.

Deposition of Miss Emma Roth read.

Deposition of Hugh J. McDonald read.

Deposition of Dr. William Kohlman read.

Deposition of Henry Thorp read.

Deposition of David Goldstein read. Objection entered as to all information witness received from Lawrence Fabacher.

By the COURT: It is objectionable. What he knows he may testify to, but what somebody else told him can't be.

COUNSEL FOR CONTESTANT: It states that the rules of the hospital are that either the patient itself or——

By the COURT: I don't think the rule of a hospital could effect the rule of law.

COUNSEL FOR CONTESTANT: His son, who accompanied him, was his agent and under power of attorney.

By the COURT: The power of attorney only went to temporal business he did. I guess the power of attorney don't cover that. I am disposed to allow everything in that by any possibility can be said to be legal evidence, but I don't think we ought to go into the domain of hearsay. We have got enough facts apparently without trying hearsay.

Deposition of Mace McEnery read.

Deposition of Octav Janas Morel read.

Deposition of W. W. Washburn read.

Deposition of G. H. Wormuth read.

722 Col. ENOS, being sworn for the contestant, testified as follows:

I have resided here in the city of Waukesha and am at present mayor of the city. I live in the second ward, on the north side of the river. I knew Joseph Fabacher in his lifetime. He lived on Barstow street, a neighbor to me. I knew him quite intimately ever since he lived there. There was no one living in that house from the 17th day of November, 1896, until the 3rd day of March, 1897. If there had been anybody living on these premises I think I would have known it. There were no lights visible by night. There was no personal property on these premises that winter.

Cross-examination:

There was personal property kept on the premises the winter of 1895 and '6. No one occupied the house that winter, but a man

remained in the barn and took care of the horses. I think all his horses, except one, was there the winter of 1895 and '6. In the winter of 1896 and '7 they were not there at the barn. He boarded his horses. I think it was after the 17th day of November that he left. I talked with him the morning that he went away and bid me good-bye.

COUNSEL FOR CONTESTANT: I offer in evidence a photograph of this tomb; also an affidavit of Magdalena Fabacher. It is part of the record in the case. I think it was an application made by the widow for maintenance for herself and her minor children.

Objection by proponent entered as to whatever the widow does, as she couldn't make a domicile for her husband.

By the COURT: The only record I have is as to the proof and allowance and probate of the will, and the trouble with it is in the trial. Nothing can be received unless the other side has a right to cross-examine, and I don't think it is proper.

COUNSEL FOR CONTESTANT: And the declarations are against the parties.

By the COURT: This affidavit is of his present widow. She is not a competent witness anyway. I won't admit it. I don't think it *is* anything to do with the case.

Exception taken.

723 J. J. CONSTANTINE, being sworn for the contestant, testified as follows:

I am in the real-estate and insurance business and reside in the city of Waukesha, Wisconsin; have been in business for ten years. I knew the late Joseph Fabacher. I think I became acquainted with him in the fall of 1893, when he first applied to me for insurance policies, and application- were made out in the name of Lawrence Fabacher. The policy was on this property on Barstow St., his residence property. This policy that was made out in the name of Lawrence Fabacher was delivered to the Waukesha national bank; still I am not positive. The name of the assured in that policy was subsequently changed at the request of Joseph Fabacher, or, possibly, Mr. Frame; I am not sure.

We are agents for the Hanover Insurance Company, the United States Branch of the London Insurance Company, and the Hanover Fire Insurance Company. (Insurance policies already offered in evidence shown to witness.) Both of these policies were issued to Joseph Fabacher. There are vacancy permits for 1894 and 1896; for the year 1895 I don't find any. In 1895 he applied for a vacancy permit, but in the course of our conversation he said that he was going to have a man live in the place, and, whatever I said to him, he wouldn't need any vacancy permit. The permit was from November 17th, 1896, to April 1st, 1897, it being agreed upon the part of the insured that the property should be in charge of a hired servant at all times and no fires or artificial lights permitted.

The only conversation I remember having with Mr. Fabacher in regard to his home or residence was in the fall of 1896. He came up to the office and stated that he was going away or home, I don't

know the exact terms he used, and he wanted the policies fixed up. He stated he wouldn't come to get them for several days, and I said to him, Whenever you are ready to come, call up and we will give you a longer extension—if you want it, a couple of hundred
724 days. We were going to fix the matter up, and Fabacher said, You can call over to Sperber's. I went over there, and in the course of our conversation I said to him, "It is a wonder you wouldn't stay here all winter; we have delightful winters here." He said, "Oh, no; I couldn't live in this climate." That was about the substance of the conversation. "Oh," he said, "I can't live in this climate," or he said, "It's too cold for me." I rather think Oscar Sperber was present. I am not sure about that, but there was some one with him. He had a conversation with me in relation to getting an option on a couple of lots on the hill. He said he had a friend of his he wanted to come here, who would come here and build a summer home here. He gave us his address as 1716 Calhoun street. He said there were two lots, I think he said, beside that one on the corner next, and gave us a description of the lots, and said that if we could get an option on it at a certain figure to write him, and gave us his address.

In this conversation relating to the purchase of this property I don't remember that he said anything in reference to his residence in New Orleans or in Waukesha. During the summer of 1895 and 1896 he always mentioned his home to me. He said he had a nice residence in New Orleans and said that his son was located down there. I cannot fix definitely that he referred to this as his permanent or summer residence or home. It is an impression I got in my mind that this was his summer residence. It was only my impression. I might be mistaken.

Cross-examination:

This policy was issued first to Lawrence Fabacher and afterwards changed. I don't know that Lawrence Fabacher owned the property. I didn't look up the record. It is necessary to have an insurable interest in the property in order to secure insurance on the same. If he had no interest in the property the policy would be void. Our business was done entirely with Joseph Fabacher. I cannot say that Joseph Fabacher instructed me to issue it in Lawrence's name. It was afterwards corrected. The policy in Lawrence's name did not stand very long, probably a month or two, then it was
725 corrected and issued to Joseph Fabacher. I think some one from the Waukesha national bank called our attention to this matter. The party that was going to purchase property near Mr. Fabacher here on the hill was going to live here, as I understood it—going to build a home. I do not know whether he was to live here permanently or not. I couldn't tell. The property Mr. Fabacher had on the hill was within the incorporated limits of the original village of Waukesha. It is close to the line of Pewaukee, but I guess it is in the town of Waukesha. I suggested to Mr. Fabacher that he might have 200 days' extention. Possibly it was

Mr. Fabacher who informed me that he only desired a vacancy permit until the first of April. He, no doubt, must have told me.

COUNSEL FOR THE CONTESTANT: With this card containing Mr. Fabacher's address in the city of New Orleans, and the copies of the notes and the list of bonds which I offer in evidence, I close the case.

By the COURT: You may introduce that evidence when it comes. Contestant rests.

COUNSEL FOR PROPONENT: I offer in evidence the following depositions, taken by notice on the part of the contestant and not offered by them, viz: Dr. F. Loeber, Louis Graham, and D. B. Thompson, taken at the instance of the contestant, but not introduced by them.

I also offer in evidence the deposition of Henry Rice. Deposition read. I offer in evidence the deposition of Bernard McCloskey.

I offer in evidence the deposition of General Eugene Mae.

I offer in evidence the deposition of Otto Thoman.

I offer in evidence the deposition of Frank Pace, and also the deposition of Joseph Shutten; also the deposition of Thomas Nickolson; also the deposition of Fritz Janke.

I offer in evidence the deposition of Henry Wellman, president of the Teutonia bank. I also offer in evidence the deposition of J. C. Wenck, and deposition of W. A. Corbin; also the deposition of Christian Schopp.

I also offer in evidence the deposition of Henry Haller. In the reading of the deposition of Henry Haller the following
726 question was objected to: "Did he tell you why he came dow- here?" Objection.

Objection overruled. Exception taken.

COUNSEL FOR PROPONENT: I offer in evidence the deposition of George Wegman, Peter Wegaman, John Malone, Joseph Taylor, Henry D. Hart, Simon Block, and H. H. Hodgson.

By the COURT: Up to what time do you admit that Joseph Fabacher was domiciled in the city of New Orleans?

COUNSEL FOR PROPONENT: I think he arrived here on the 17th or 20th of June, 1895. The register shows that he came to the National hotel and registered, I think, the 20th of June, A. D. 1895.

By the COURT: It can be conceded, then, that his domicile was in the city of New Orleans up to that time?

COUNSEL FOR PROPONENT: Yes, sir.

By the COURT: That on the 20th day of June, A. D. 1896, he arrived in the city of Waukesha, and it is the contention of the proponent that thereafter he became an inhabitant and resident of this State and remained so up to the time of his death. The contestant denies all that, as a matter of course, that thereafter he became an inhabitant and resident.

Col. ENOS recalled on the part of the proponent, and testified as follows:

I am the present mayor of the city of Waukesha, and live across the river, on Bridge street. I knew Joseph Fabacher in his lifetime since the summer of 1893; he lived right across the street from me,

about one hundred feet from me. He built this house in the winter of 1893 and 1894, but besides a residence he built barns and stables, three different buildings put up at different times, first one and then another, and then another, and also a small chicken-house. These buildings were constructed after the general method of constructing buildings of that kind in this locality, suitable for the year around. I think his frontage is one hundred feet on Barstow street, and the depth is two hundred feet. I think he moved in there with his family in June, 1894. It is my recollection that
727 he arrived a few days before the house was ready for him to move in. That season he stayed here quite late in the fall—what we call fall. I think it must have been October. That season I think he had one horse; I think that was all. He had a double-seated carriage, I think. In the fall he went back to New Orleans; that is where he said he was going. I think he shipped this horse to New Orleans in the fall of 1894. In the following spring or summer, I think, he came back in June. He brought his horses and carriages with him in the summer of 1895; he brought a span of horses and a pony. That summer he had a double carriage and another vehicle. In the summer of 1895 he had servants from New Orleans. He had one servant from New Orleans in 1894, but in 1895 he had a negro and a white girl and a negro boy. In 1895 I think Fabacher stayed here until some time in December in that year. He was here Thanksgiving. I don't think he went back until after the first of December. His horses were kept at his place—two horses and the pony and another horse he bought during the summer; but this last horse I think was wintered by some farmer who took the horse. That made four horses in all, but only three were kept in the stable. A man named Joe slept in the barn all winter and took care of the stock. In the spring of 1896 Fabacher returned, I think, in June; it might have been in May, but I have nothing by which to fix the date in my mind. He improved the grounds in 1895 during the summer and the fall; he improved his lawn and grounds, and I believe he built another barn in 1895, and in 1896 he built his chicken-house. In 1896 he left in November, I think, after the 17th of November—what day I can't say—I think a few days after the 17th. He told me that he was going to have his horses boarded at the transfer barn. It was on account of expenses, I suppose. During that winter my man had the keys to the house, and two winters, I think, and sort of looked after it; had an oversight over the building. There was a boy named Hughes that worked for Mr. Fabacher the previous summer and fall. This boy they boarded at the National hotel during the winter of 1896, and he came there every day, or mostly every day
728 to feed the chickens that were kept there that winter, which belonged to Mr. Fabacher. In the fall of 1895—in September or October—he connected his dwelling with the water main. I joined with him in this improvement. We have had a great deal of conversation about making water connections. He wanted it in his house; he wanted all the modern improvements in his house. He had his house piped for water the first summer he was there.

We were always neighborly with Mr. Fabacher; we were well acquainted and would talk together most every day, and sometimes he would come to me for counsel and information. I had a conversation with him in regard to his residence in the fall of 1896, about his voting. He spoke to me one day and wanted to know if I thought he had a right to vote here. I told him I didn't know; it would depend upon whether he was a resident; and he discussed the question, and I advised him to see some lawyer. We talked about whether his residence was here, and he claimed he was a resident. I probably tried to explain to him that it was necessary for him to live in the State a year before he could vote, and he said he was a resident and this was his home; that he sold all of his property and wasn't a resident of New Orleans any longer; he had disposed of all his property there, and this was his home; he intended to *leave* here and make it his home. We had, I think, two other conversations, but this one was, I remember, the most particular on account of the earnestness with which we discussed the question. He was very earnest in the matter, and I told him a person might be a resident in the State, but not long enough to be a voter; if he had his residence in New Orleans, he couldn't have a residence in the State of Wisconsin; and he said, "My God, didn't I tell you I sold everything there and live here? This is my home." I think he told me on election day that he voted here. He said that he voted for McKinley; he thought McKinley was a gold man. He said that he sold his property down there the summer before, and that was in 1895. He did not specify any time as to when he had a residence in the State of Louisiana. I talked to him about making an investment here, and he talked about investing in the water works here in 1895.

729 The water works was in the hands of a receiver, and he spoke about it, saying that if he had money he would like to invest, and talked to me several times; I remember half a dozen times. He wanted me to invest with him, but I didn't think it was a very good investment.

Cross-examination:

When he came here in 1895 he brought with him two servants, a negro boy and a girl—I suppose it was a cook—that came with the family. In the beginning of December, 1895, when they went away they took the negro boy and girl with them. Now, about the 12th of May, 1896, when he came back, he did not bring the same servants that he had in 1895. He brought a negress—a house servant; I think that was the only servant he brought from New Orleans; that is what they said. After the 17th of November, 1896, the family returned and the negress left with them. The horses that came there in 1895 were brought, I understand, from New Orleans. The large new carriage that he brought last, I think he told me that he got it in New York; I won't be certain, however. I think that most of his liquors came from New Orleans. There was no occupant in Fabacher's house in the winter of 1895 and '6:

no one lived in the house and there was no one of the family there in the winter of 1896 and '7.

I saw what is called a crescent over the porch; I never knew what the object was exactly; he never spoke to me about it; I did not know that it was the coat of arms of the Crescent City; I must say that I didn't know that it was. When he came to consult me in 1896 he did not tell me that he had a house rented and furnished and in the charge of a watchman in the city of New Orleans. He did not tell me that he had a cow there, or that he had an agent there; neither did he tell me that he had a large amount of money on deposit in the bank and kept a bank account there. The only facts he stated was that he sold out everything in New Orleans and this was his home here; that he had no money interests; I suppose he meant in New Orleans. I don't think I ever heard of a
730 tomb until after I heard of his death. He never told me that all of his children with the exception of the two you have mentioned, with he and his wife and the grandchildren, were living in New Orleans, but I know they did. At one time he told me of his experiences in New Orleans, and naturally I understood that lost all his life had been spent there. In 1895 he spoke to me with reference to the water-works investment, along in July or August. He did not tell me that he had his money invested in New Orleans four per cent. bonds. I told him that I would not invest more than $40,000 in the water works; that it was doubtful then whether it was a good investment. He said he could raise the money. He wanted to go in for half.

Redirect examination:

He frequently talked about the climate and surroundings and as to how much his health had improved. He liked it very much here. He disliked very much to return to New Orleans. He thought he was better here. He said that he returned on account of his family; they wanted to go and urged him to go.

OSCAR SPERBER, being sworn for the proponent, testified as follows:

I am a hotel-keeper, residing here in the city of Waukesha, where I have resided most all my life. I was acquainted with Joseph Fabacher in his lifetime. He boarded at my hotel within the last five or six years, in the summer seasons. I think the first summer he stopped at the hotel was in 1893. That was the year he roomed at Mr. Poole's. I engaged room for him and he took his meals at our house. In 1894 he built the house on the hill. I remember the day he registered to vote in this city in 1896. I had a conversation with Mr. Fabacher, in which he asked me whether or not he would be allowed to vote here, and I told him I didn't know whether he was capable of voting; that he had better ask some one who understood the election laws better than I did. I told him to see Col. Enos and he would understand it better then I did.
731 He told me he intended to make Waukesha his home; that he wanted to be a citizen here and wanted to vote. This

was in the presidential election of 1896. I went with him to the place of registration, where he registered. The place of registration was in the second ward and in charge of Charles Trakel and William Leopold. Mr. Fabacher left here about the middle of November, 1896, after he voted. He told me that he had broken up his home in New Orleans, and that he had sold out all of his property there. I don't just remember how we got to talk about it, but I know he told me he had sold everything there. He expected to make his home here.

Cross-examination:

I stated that Mr. Fabacher inquired of me whether or not in my opinion he was a qualified voter. I told him I did not know and referred him to Col. Enos. I had frequent conversations with Joseph Fabacher, in which he referred several times to New Orleans as his home. I cannot say positively whether it was in the year of 1895 or 1896. In reference to his home here, he said he intended to make this his home; that is what he said to me. He never made a statement to me that this was his home, or that he had already made this his permanent home. In the summer or fall of 1895 I used to meet him twice or three times a day, and my conversations with him were frequent. I could not say that he carried on correspondence with his relatives in New Orleans. I know he frequently requested me to write letters for him, but they were only of a business character. In the summer of 1895 or the fall of that year I know that Mr. Fabacher knew of a building being constructed by his son Lawrence in New Orleans for his future occupancy—when Mr. Fabacher would come back to New Orleans in the fall of 1895. I am not positive as to the date, but he told me he intended to occupy that when he went back. He got his liquors and cigars from New Orleans, and also his cook and man servant. He brought three horses from New Orleans. He invited me to come and see him at New Orleans about the time he took his departure
732 from here in 1895. He also invited me to come and see him at New Orleans in 1896.

Q. He had this new home constructed by his son?

A. I couldn't say. It must have been at that time.

Redirect examination:

I am not positive whether or not he said to come and see him or call on him in New Orleans. I suppose if he occupied the place there he would call it his home. I don't pretend to say what he did say about it, only that he invited me to call on him. I think, if I remember right, when they asked him before the registrar board whether or not this was his home, he said, yes; that it was. He must have said that or they would not have allowed him to register, I think. He spoke to me about having sold all of his property down there and broken up down there or was then there at that time. I do not know that he mentioned where his home was. He did not say that he had sold all his property.

Recross-examination:

I am not sure that he was sworn by the board of registry when he registered here in 1896.

Col. Enos recalled for the proponent:

I remember Mr. Fabacher showing me a coat he had bought, which was lined with fur; this was in the fall of 1896, I think. (Witness looking at coat.) That looks like the coat.

Counsel for Proponent: I offer the coat in evidence.

Received.

I also saw him wear a seal-skin cap. He never said anything about the cap. I could not swear that this is the identical cap. At the time he left in the fall of 1896 he asked me to take the coat and keep it in my house, and I told him that I thought it was better for him to keep it in his own house; that we were troubled with moths in my house.

Counsel for Proponent: I offer the cap in evidence.

Received.

Cross-examination:

I saw him wear a cap like that in the fall of 1895, but the first time I ever saw the coat was in 1896. I saw him have it on once that I remember of. We had a big snowstorm here before the 17th of November, 1896. The snowstorm I speak of I think
733 occurred the Thursday after election, and it was while that snow was on the ground that he was wearing it, probably. He showed it to me and spoke to me about it. I have seen the time when a fur coat wouldn't be uncomfortable in October, especially for a man coming from the South or most anywhere else. I always thought that he wore lots of clothes; I noticed that he wore pretty heavy underclothes. I have seen him in his shirt sleeves, and he always had an abundance of clothing.

James Dent, being sworn for the proponent, testified as follows:

I have lived about nine years here in the city of Waukesha, on Barnard street, in the second ward. I knew Joseph Fabacher in his lifetime; I know where he lived here. It was what is called Oak hill, on Barstow street, seventy or eighty rods from my home. I was acquainted with him when he constructed that house; the year before he built the house. I was partially acquainted with him. We were on talking terms. He used to come to Spence's spring occasionally. That is the way I cultivated his acquaintance. After he erected this house he came to the spring occasionally. This is the nearest spring to his residence. He came there to get water and was accompanied by the boy sometimes and sometimes with his wife. He evidently came over to drink the water. I had a number of conversations with him during the years of 1894, 1895, and 1896. I had no conversation with him in reference to his property in New Orleans, other than I heard him say he sold out

there in 1895. When I was a member of the village board Mr. Fabacher came to me and spoke to me two or three times about wanting to get the city water piped into his residence. I was on the committee on streets, and he said that Col. Enos and himself wanted to get the water and wanted to know, if it was possible to do so, if they would advance the money to pay for putting in the main. I told him that under those conditions that the board might possibly pass a resolution putting the water up there. He
734 was anxious to get the water, and finally the water was put in there, and I understand that they advanced the money to pay for it. He always claimed to me that this was his home. At one conversation which took place when we were talking about the water being put in his residence he said: "You know I have come to Waukesha to stay, and I want to put all the improvements in my home." I think this was in 1895. The next time that we talked about his home the conversation took place down at the spring about the presidential nomination and about voting. He was accompanied by a man named Henry Schultz, of New Orleans, and they were talking about how they were going to vote, but that he didn't think his vote would account for much, as he voted in New Orleans. Mr. Fabacher said that he was a voter here and his vote would count. He said he was going to vote here and gave reasons why. He said he had not voted in New Orleans within a year or two and his residence was now here and he could vote here in Waukesha. I had no further conversations with him relative to voting until election day. I was down near our precinct voting place in the second ward and Mr. Fabacher was down there with his pony and what he called the road wagon, and he came to me and said, "Don't you think I can trust you to mark a small ticket for me?" I said, I shall mark it just as you want it if I know how, and he said, "That is al- right," and I stepped over to his buggy and he produced a small ticket himself and told me how he wanted to vote, and I showed him how to mark the small ticket and showed him how to mark his other ticket. He wanted to vote right as I wanted to. Now, I said, if you are in doubt about it, I will show you a sample, and he said, "No; your word is good," and he took his small ticket and went into the precinct and I saw him when he voted. I had a conversation with him about his right to vote.

While he was marking the ticket I think I asked him the question if he had voted outside of the State within the last year and he said he had not. It strikes me that at that time I said to him that
735 if he was not a voter here he was liable to get into trouble, and he said he was a voter. I don't know that I said anything to him as to how long he had resided in the State. I might have done so, but I think I have forgotten. I think I said to him that I was a friend of his and I didn't want him to get into any trouble, and he said there was no danger; that he was a citizen here and this was his home and he had a perfect right to vote. At different times—I can't exactly tell the dates—we had conversations about the country and surroundings, and he said that the northern people did not appreciate what we had here.

The old gentleman spoke as though he calculated to make his home here on account of his health; that he felt better here; always felt good in Waukesha. He said he might return to his old home in the winter season on a visit, but he calculated that this was his home, and he always calculated to go down to New Orleans in the winter because he didn't like the cold weather. He seemed to have a dread of the cold weather. I talked to him at one time, and I said to him, "Our cold weather is the best part of the season, when we have got sleighs and nice snow, and that if he stayed once he would enjoy it. He said he did not know but what he would, but some way or other he hunched his shoulders up a little and said he didn't like cold weather.

I gave him a verbal option on my property. In some conversation with Mr. Fabacher, I can't exactly say when, he said he had a friend in the South, and that he wanted to get a place here to build him a residence, and he was anxious to, and he delegated Mr. Fabacher to look up a place, subject to his approval, when he came, and he told me he wanted a lot opposite his residence on that corner, but he couldn't get the people to let him have it at a fair price. They didn't seem to want to let it go. He said, "They seem to get the idea that we have got money, and want to get it out of us." I remember distinctly that he said that this was his home, and he wanted to have some of his old company here by him. I
736 never was in his house but once. It was a nice home. As far as I could see, it is just as good constructed as any frame house in Waukesha.

Cross-examination:

I think there was no questions asked him when he wanted to vote. He was not challenged. I don't think he was sworn when he voted.

CHARLES TRAKEL, being sworn for the proponent, testified as follows:

I am a mason contractor and have lived here in the city of Waukesha all my life. In the fall of 1896 I was chairman of the board of inspectors at election and registration in the second ward in the city. I knew Joseph Fabacher. He lived in the second ward, on Barstow street. In the fall of 1896 the general election took place. There was no general election in the fall of 1895. The spring charter election of 1896 took place in April. Between the first of June, 1895, and November, 1896, there was but one election, and that was the charter election of the city of Waukesha, that took place in April. Joseph Fabacher lived in a house of his own on Barstow street, in the second ward, the ward in which I was chairman of the board of registration. We held our sessions, I think, a month or two weeks before election, which took place in November the 3rd or 5th; I am not sure. Joseph Fabacher registered. I had conversation with him in regard to his home when he came to register. I asked the general questions that we a-ked a man when he

thinks he should register. I asked him where his home was, and he said Waukesha. I asked him how long he had lived here, and he said over a year, and I asked him if he had voted anywhere else in the city or State, and he said no; he hadn't voted anywhere. Then I asked him whether he intended to make this his home permanently, and he said he did. Mr. Leopold, another member of the board, was present when we placed his name on the register. I was chairman of the board of inspectors at the general election in the fall of 1896. I saw Mr. Fabacher at the polls and saw
737 him vote. I received his ballot. I did not ask him any questions. His name was placed on the poll-list on the 3rd of November, 1896, in the second ward of the city of Waukesha. I had no other conversation with him.

Cross-examination:

I don't think he was sworn.

Redirect examination:

I don't understand that the law requires it; I don't think we swor*n* him in.

WILLIAM LEOPOLD, being sworn for the proponent, testified as follows:

I am a barber and reside in the second ward in the city of Waukesha. I was one of the board of inspectors at the general election in 1896 and a member of the board of registration. I knew Joseph Fabacher; he lived in the second ward, on Barstow street. We held our sessions for registration on Madison street, I believe, ten days or two weeks before the election. Charles Trakel, Edward Mellon, and myself were members of the board of registratrion. I was there when Mr. Fabacher came to register; when he came there to register Mr. Trakel, I believe, asked him the usual questions whether he had been in the State a year and whether he had voted anywhere else; Mr. Fabacher said that this was his home; he said this was his home and he had not voted anywhere else and he was not out of the State a year. I was there election day and saw Mr. Fabacher vote; Charles Trakel took his ballot and his name was placed on the poll-list.

I shaved him quite often, and heard him say in the barber shop that his home was here now. He said, "I am going to New Orleans to spend the winters." He used to spend the summers here when he came; he said that a number of times. This conversation would come up in his speaking about how he liked it here; he said he liked this place better than he did New Orleans; that his health was better. He had his private cup and razor at my shop. I think he used it two years, and the razor is one he brought with him and left it with me at the shop; his name is on the cup; he never took it away.

738 JOHN J. CLARKE, being sworn for proponent, testifies as follows:

I am a capitalist out of business, and have resided here in the city of Waukesha about 25 years. I was acquainted with Joseph Fabacher; became acquainted with him in 1893 or 1894. I know where he lived here in the city. I have been at his house. I had a number of conversations with him about making his home at Waukesha. When I was in business as a merchant he used to come in the store and see me, and he told me about his intentions of making this his home; he said, This is my permanent home. After he built the house he lived in it. I also met him in New Orleans in 1896, about the 13th or 14th of February; when I met him there he asked me when I came down and wanted me to go down and meet his son Lawrence; it was directly on my way where I was going, and we went in, but he happened to be out, and he showed me through the restaurant establishment, and then I asked him how he was feeling, and he said he was feeling very well, except he had a cold. I asked him when he was coming back, and he said, "I don't know; probably in a couple of weeks; I wish I could go back with you; I feel so much better in Waukesha than I do here; I don't like it here; I am all choked up." He wanted to know when I should call on his folks, but I didn't know exactly, but would call before I went home, and I went out a couple of days after that; it seemed that he had been moving in his house and wasn't quite settled; he told me that the house he was in he was paying rent for it, and he invited me to have a glass of wine with him. I remember in looking for a glass he could not find things just as readily as he wanted to, and he said "This is different from my home in Waukesha; I have everything at my hand and know where to get it and here I don't." That was the drift of the conversation I had with him in relation to his Waukesha home; he said he was going back that year as early as he could get his folks away; he always told me that he never would come back to New Orleans were it
739 not for his wife and children; he said he would like to remain here; the climate agreed with him; he told me that a number of times in the spring. I asked him how he would like it if it was 20 degrees below zero, and he said he could get in a warm house with plenty of clothes and keep warm. He told me that he did not own any property in New Orleans; that he had sold it some time before. When he voted at the general election here in 1896 he came into the store on election morning and told me that he had voted. At the time he built his house and was living in it he told me he intended to make his home here and it was his home.

Cross-examination:

I could not tell the name of the street on which he resided in the city of New Orleans when I visited him. I could not tell how many rooms there were in that house. I was in three. I cannot remember that I saw a piano in the parlor. I know they were not settled. There was a carpet on the floor in the parlor. I do not re-

member seeing any fire-screens there or spit-oons. I saw some pictures laying on the floor; they were not hung up. I don't remember seeing any family pictures. I did not pay any attention to the pictures and do not know if they were family pictures or religious pictures. I do not remember that there was a chandelier in the parlor.

While I was there I had a glass of Rhine wine; there might have been chairs in the parlor; I didn't notice them; there was a carpet on the hall. I did not see any rockers and I saw *know* books there. I did not see any family pictures on the wall. I do not notice this sort of things; they were not settled at this time. Mr. Fabacher showed me the different bed-rooms; there were beds and carpets on the floors. I presume there were chairs; I didn't pay any attention. I didn't see any towel rack or ornaments in the bed-rooms that I know of, but they might all been there. I saw no family or religious pictures in the bed-rooms. I was not in the dining-room.

I only remained there about fifteen minutes. Mr. Fabacher
740 said that he was just moving in, and I should judge that they were from the appearance of the house; this was about five or six days before Mardi Gras. I remained there afterwards about eight days, until I got a telegram to come home. I remained there until after the Mardi Gras. I should think the house here was better than the one there; it would suit me better from the surroundings and everything. I did not see any cow in the yard, but he had a yard large enough for a cow. I don't know anything about the servants; I didn't see any of them there; I only remained about fifteen or twenty minutes. When I called on this occasion Mrs. Fabacher and their daughter Lena was there.

Q. Do you remember were you asked by Mr. Ryan in the probate court you testified when asked the question, "What did he say to you, if anything, about staying all winter?" and you answered, "He told me he preferred staying here to going home." Now, you gave his own words, and said that mamma wanted to go down and see the children?

A. I just said so this evening; that is correct.

Rev. W. G. MILLER, being sworn for proponent, testified as follows:

I am the resident pastor of St. Joseph's Catholic church and live here in the city of Waukesha. I knew Joseph Fabacher in his lifetime. I became acquainted with the family before I became acquainted with Mr. Fabacher; the family had half a pew in church here in connection with Mr. Houlihan; that portion of the pew was rented not directly from me; Mr. Houlihan had the privilege of subletting it with my consent, and it was done in that way. I think the pew rent was paid by them jointly. I knew Mr. Fabacher's son Jakie and his daughter Lena, the minor children; his son Jakie attended the parochial school here a short time in the fall term. I met Mr. Fabacher occasionally on the street and had conversations with him respecting his living here and going to New Orleans. When Mrs. Fabacher would have occasion to call on me he would

bring her up in the carriage, and in conducting her out I would go and see him a little while, and when it was getting cold Mrs.
741 Fabacher would be longing to see the children. Mr. Fabacher told me repeatedly if it was not for his wife urging him to go back for the winter, partly because the children were going to school there and partly because she wanted to visit the children down there a little. The pew was rented for an indefinite period, payable by the quarter. The half pew occupied by Mr. Fabacher's family was held by them until after his death; it was held, I should judge, something over two years; he had paid for it quarterly.

Cross-examination:

If I can ascertain and give the time when Jakie Fabacher attended our parochial school I will do that. Joseph Fabacher did not tell me he was divorced from his wife on account of adultery with his last wife. He was not a communicant of our church. He never performed his Easter duties here, but I do not know whether or not any of his family have performed their Easter duties at our church. I know that the family have taken their communion here, but as to performing their Easter duties here I do not pay any particular attention to that. The Easter season is quite a long season. It was remarkable if they were here. I think they were here, but I couldn't tell. This pew that was sublet to Mr. Fabacher did not belong to Mr. Houlihan. Half of it was subject to be sublet at any time. After Jakie left our parochial school I understand he went to Spring Hill college. I think Jakie told me that he had gone to the Jesuits in New Orleans before he came here. I couldn't tell what year it was that he attended the parochial school here.

Redirect examination:

I remember now that Mrs. Fabacher came here and lived in the summer of 1897 until September. I remember Jakie left here in the fall some weeks before his parents.

742 E. K. KIMBALL, being sworn for the proponent, testified as follows:

I have resided here in the city of Waukesha for 43 years. I knew Joseph Fabacher and where his home was here in the city. The property was formerly a part of my father's estate. I remember seeing Mr. Fabacher in the fall of 1895 at his house and downtown. I had conversations with him that fall; sold him a cow in the latter part of September or the first part of October. At that time he said he was going to stay here that winter, and when he bought the new milch cow of me he wanted to know if she would give milk all winter, and I told him she would. After I sold him the cow I saw him several times; used to see him at the house. I was in his house twice, and he said that he was going to stay there that winter. He did not mention anything about the family. There was no one in the room when I was there, only, I think, one servant. It was Sunday morning and the family had gone to church. He said

nothing about where he intended to make his future home. I don't know that he had a home in New Orleans; I didn't know where he lived.

Cross-examination:

The cow Mr. Fabacher bought of me in the fall of 1895 was not there in 1896. I saw the cow there in the fall of 1895, not long after I had sold it.

GEORGE HARDING, being sworn for the proponent, testified as follows:

I am a farmer, and — reside here in the city of Waukesha for 28 years. I was acquainted with Joseph Fabacher; became acquainted with him in the summer of 1894. I have relatives who live next door to him, and I drove there, wishing to hitch my horse to the post on the hill next to Col. Enos' residence. I used to drive over there probably once a week, and, being summer, I met him quite often walking around there. I think it was in the summer of 1895 and '6 that I had conversations with Mr. Fabacher in relation to his residence and home. Mr. Fabacher would drive up to my farm,
on Arcadian avenue, and look over the stock, and we would
743 have conversations about Waukesha being a fine place to live.
He would have a tendency to speak on that subject, and he told me a number of times that he felt so much better here that his conversation led me to believe that his preference was her, but that his family did not seem to want to stay here with him. I do not remember that he said anything about his property in New Orleans. Perhaps the most pointed conversation in regard to his home was on his return from the South in the spring of 1896; I think it was in the month of April. I was coming out of Herbrand's meat market, on Broadway, and he sat there in his buggy, and some of his people was in the market. This was the first time that I had seen him that spring, and I went up to the buggy and shook hands with him and had a little talk, and I said, "I am glad to see you back, Mr. Fabacher," and he said, "I am glad to be back; I have been sick, but I have got back finally, and I am going to stay." This was probably the most pointed conversation we ever had. He spoke to me several times in the summer of 1896 after the death of Mr. Teller, the friend of his from the South, in which he referred to his coming back South, saying that if Mr. Teller had stayed here he would be alive today. He always claimed in his conversations to me that he felt better here, and that it was more healthy than it was in the South.

Cross-examination:

When I met him in April or May, 1896, he did not tell me where he came from, but, of course, it was a supposition that he came from New Orleans. He never spoke in particular about his family, or where his children or grandchildren resided. There was some talk of going to New Orleans, and he said I could drop in his place of

business; that his son was always there. He asked me to come and see him in New Orleans. I don't think he mentioned where I should find him, but said that if he wasn't there that his son was always there. He mentioned the street and place, but I cannot recollect what was the name. I had two conversations with Mr. Fabacher with reference to going down to New Orleans; one was in 1895 and the other took place in 1896. I cannot say that
744 they took place just prior to leaving for home, as he used to drive by my place very often, and probably I saw him fifty times during the season. I don't think he mentioned his home in New Orleans or anything of that kind in those conversations; he simply invited me to come and see him when I went there. He gave me his address verbally, but I don't recollect it; it was given in a way of a general invitation. I don't think that he told me he had lived in New Orleans fifty years before he came here. He talked generally of the city of New Orleans, and, of course, I knew well enough that was the place he came from and the place where he went to when he left.

Redirect examination:

Mr. Fabacher talked to me about the restaurant business that his son was engaged in at New Orleans and gave me the address of the restaurant. He led me to believe that his family wanted him there, but he didn't want to be there.

JOHN BRICKLES, being sworn for the proponent, testified as follows:

I am manager of the Wilbur Lumber Company and have lived here in the city of Waukesha for 19 years. I was acquainted with Joseph Fabacher in his lifetime; think I got acquainted with him in the spring of 1894 when I was selling him lumber and fuel. I delivered goods that he bought of us to his house on Barstow street. In connection with business relations I had with him I had a number of conversations about his home and residence here. I think it was late in 1895, either the latter part of November or the early part of December; I am quite sure there was snow on the ground; it was sleighing. I was standing in front of my office and Mr. Fabacher drove by in a cutter and I asked him if he wasn't going back to New Orleans that winter and he said so far as he was concerned he would rather stay in Waukesha, but he expected he would have to go back; in fact he had made up his mind to go back on account of the family. I don't remember that anything was said about his coming back next season; he came back in 1896. In that year I do not remember that I had any definite conversation with him about his coming back or staying here.
745 He always spoke as though he liked the climate and the city; he spoke of enjoying the cold weather; said that he could stand the sleigh-riding at this time; he had a heavy fur cap and heavy fur gloves and coat; I think it was a sealskin cap; at least it looked like it. The last record that I have of his buying any

coal was in the fall of 1894; he might have bought coal after that time and paid cash for it; in that event I would have no record of it; we sold him furnace coal for the furnace in his house; I saw it there in the summer of 1894. The house was built similar to our houses here; back-plastered and paper outside; I furnished the material for it; it was all good material; just as good as put in any house in town; no hardwood finish, but first class of its kind; it was a well-built house; we furnished the material and Mr. Michael Meyer built it.

Cross-examination:

Q. You were asked in the lower court, "Did you have a further conversation with him after that—that is, in 1895, after that conversation? Yes; shortly after he came back he said his people couldn't stand the cold weather, but he liked the climate very much himself; he said when it got so cold he couldn't stand the cold he was going to New Orleans."

A. This conversation I had with him was shortly before he went to New Orleans.

Q. You spoke of a conversation you had before he went to New Orleans in 1895 and you spoke of the conversation after he got back was in 1896, I take it from the question.

A. I don't remember that conversation.

Q. I will read the question: "What did he say to that? I had a good many conversations with him. I remember in the fall of 1895 I met him on the street one day and he told me then that he intended to stay here that winter. When was that? I couldn't say; some time in the fall—that is, the fall of 1895. Did you have a further conversation with him after that? Yes; shortly after he came back; it must have been in 1896; he said his people couldn't stand the cold weather; he liked the climate very much himself, but he said that when it got so cold he couldn't stand the cold he was going to New Orleans.

746

A. I might have said that; I don't remember; if I said so it is correct. My memory being nearer the time the conversation occurred, it must have been correct if I said so. Yes; the time when I saw him out sleigh-riding with the fur cap on was the only time I remember now.

PAUL CHRISTOPH, being sworn for the proponent, testified as follows:

I am a merchant and have resided here in the city of Waukesha for nearly 18 years. I am a member of the firm of Christoph Brothers, who keep a general store here. I was acquainted with Joseph Fabacher in his lifetime; knew him ever since he came to Waukesha; he dealt at our store. I know where he lived on the hill on Barstow street. Very often we would have conversations about his residence here. He very often spoke to me about what a nice home he had here and wanted me to come up and see him. He said in conversations with him that he wished to stay in Waukesha during

the whole year; that he felt better here, and said that the one reason that he went back was on account of his wife and the children. I remember of him being here late in the fall of 1895, during the cold weather when we had sleigh-riding, but I know that he did come out, because he told me that he did and others told me.

Cross-examination:

Q. Didn't he tell you that he preferred living here to his home in New Orleans?

A. He didn't say home. He preferred living here to his home in New Orleans, but he preferred living here.

Q. Did you testify here in the lower court?

A. I did.

Q. Wasn't you asked the question, what would he say, and you answered he said he preferred living here to his home, and he said he would stay here altogether if it wasn't for his family?

A. Yes, sir; he said that he felt better and liked it better here.

Q. I say did you say in your testimony in the lower court he said *said* he preferred living here to his home?

A. Yes, sir.

747 MICHAEL HOLMAN, being sworn for the proponent, testified as follows:

I have lived here in the city of Waukesha since 1893; have lived in the county many years before that. I was acquainted with Joseph Fabacher in 1893; he was rooming with Mr. Poole, my neighbor. I lived in the next house to him. Mr. Fabacher remained there all the summer of 1893 and during the fall. The next year he was living on the hill on Barstow street, a neighbor to Col. Enos; that was in the summer of 1894. I had frequent talks with him. I knew him in 1895. In 1895 he shipped from New Orleans some horses and a carriage, which he did not have here before. We had a number of conversations in 1895 at my place and at his place. He and his wife would come to my place and I would go to his. He said that he built this for his home and he did not have any other; that he sold that he had in New Orleans, and that this was his home.

When he was here he said he always was well—in good health—and that was why he was going to stay in Waukesha. In the month of October, 1896, he said, "I won't go any more to New Orleans. I am going to vote here; I am a citizen of Waukesha." In the fall of 1896 I saw him, I think, a week or five days before he went back to New Orleans. He said he did not want to go, but his wife coaxed him to go home and see the children once more. He didn't want to go, but his wife said, "Papa, won't you come once more with me and see the children?" When he went away I shook hands with both of them and bid them good-bye, and I said, You may change your mind, and he said, "If I do I could soon be back." He left his horses and carriages here. There was no place like Waukesha; here is where I hold my health.

A. J. FRAME, being recalled by the contestant, testified as follows:

I have got copies of the three notes, one for $3,500, and another for $3,500, and another on demand for $3,000, all signed by Theodore Broderick. At the time of the death of Joseph Fabacher the two notes for $3,500 each were in the safety-deposit box in
748 the Waukesha national bank, put there by Mr. Fabacher, and the third note of $3,000 was handed to me by Lawrence Fabacher, I think, the 25th day of March, 1897, the day the inventory was made. This $3,000 note was paid by Theodore Broderick on the 31st day of December, 1897; he sent a check or certificate on the People's State Bank of New Orleans. I could not tell when that certificate or check was dated without referring to the book. I received it, however, some two or three days before the 31st of December, 1897.

COUNSEL FOR CONTESTANT: I offer in evidence the three notes.

Objected to.

COUNSEL FOR CONTESTANT: The purpose of offering them is to show that the property left by the deceased is New Orleans property.

By the COURT: I will receive the evidence, although I have intimated that it isn't a question in this case at the present time, so far as the jury are concerned. I will receive it for what it is worth.

Besides the notes I have mentioned there were in the bank box at the time of the death of Joseph Fabacher fifty bonds of $1,000 each—City of New Orleans semi-annual 4 per cent. bonds, payable January and July 1st. This list shows the numbers.

COUNSEL FOR CONTESTANT: I offer this in evidence, and also a receipt of $2,000 which was to be charged against the estate.

Objected to by proponent as incompetent, irrelevant, and immaterial. Objection overruled, and exception taken.

Here is a copy of that receipt, if you wish it. I have still in my possession the original of this receipt.

COUNSEL FOR CONTESTANT: I offer this receipt in evidence, dated January 7, 1896, for $2,000.

I received the $50,000 of New Orleans 4 per cent. bonds in the following manner: On August 8, 1895, $10,000, by express; August 9th, $10,000; August 10th, $10,000; August 12th, $10,000, making $40,000 in all in 1895. May 9, 1896, we received $10,000, making a total of $50,000. The $40,000 were marked from Charles F. Buck, New Orleans, Louisiana. They were shipped by Charles F.
749 Buck, but the bonds shipped in 1896 were from Joseph Fabacher, New Orleans. These bonds are still in the possession and under the control of A. J. Frame, executor of the estate of Joseph Fabacher, deceased, executor of Joseph Fabacher, duly qualified as such.

Cross-examination:

The last assignment of bonds was from Joseph Fabacher direct. The others were from Mr. Buck, of New Orleans. They remained in his box at the bank, so far as I know, and were there at the time of his death—except $4,000 which he laid out on November 17, 1896—with instructions to me to send them to him if he wanted them and called for them, but otherwise they were in the hands of the Waukesha national bank at the time of his death. I returned them to the box on the 25th day of March, 1897.

COUNSEL FOR PROPONENT: I think that is all the cross-examination. We will now take Mr. Frame as our own witness.

I became acquainted with Mr. Fabacher very shortly after his first coming here, eight or ten years ago. I learned from him that he was building a house here on the hill, next to Col. Enos. He commenced to build in 1893, and finished in 1894. The first year he lived in it was in 1894. I found Mr. Fabacher to be positive in his convictions and expressions, and a man that took care of his own affairs and who could not be dictated to by others. For a man of his age I thought he was strong and vigorous. About the time he built his house here I had a talk with him about how he liked Waukesha, and he always expressed himself as being very much pleased with Waukesha after the year he came here.

He talked to me in 1894 about making his permanent home here.

Q. After Fabacher lived here in 1894 he went home to New Orleans and voted there?

By the COURT: I have got to charge the jury the act of voting is considered by our supreme court as one of the highest acts indicating the intention of residence. If he voted in New Orleans, that fact would go in favor of the contestants. You may give your evidence.

750 A. My recollection is that he did.

Exception taken.

The trend of his conversation was to the effect that he had commenced building his house, and that he was going to come here to live. Just what the conversation was in 1894 I don't remember, although often while he was building the house, in 1893, I think, he referred to the same thing. I should think he came here some time in May or June, 1895. I think it was a little later then usual. In 1895 he had conversations with me in reference to Waukesha being his home. When he came back, in 1895, I remember that he came into the office and said the reason why he was late was because he had been disposing of some of his property; that it delayed him in getting up; and then later, in August, he came in and said he was going to have some bonds shipped from New Orleans, and he hired a safety-deposit box in the bank, and as soon as the bonds arrived he put those bonds in that box. After the arrival of

the bonds he spoke to me about investing in the water works, because they were then in the hands of a receiver, and as I had been a director in the company for a number of years and knew something of the inside history, *and* I discouraged him because of the difficulty of getting water here. I told him that running the water works here was very expensive; that there was hardly any comparison in the State of Wisconsin; that they had two processes of raising water, one from below the ground to the surface and another from the surface to the water tower on the hill, and for these reasons I discouraged him buying the bonds, and that was the last of the matter. I remember later in the fall of 1895, as I was on my way home, Mr. Fabacher was on the street in a cutter, and I said to him, "Well, Mr. Fabacher, you are enjoying a little of our sleighing," and I asked him how he felt, if he enjoyed that kind of weather, and he said, "I enjoy this fine; this makes me feel vigorous," and then I asked him if he was going home to New Orleans, and he said that his wife was very anxious to go. I think he ex-
751 pressed it to me that she was anxious to get home and see the children, but as far as he was concerned he would stay all winter, but that she would not do, and he supposed he would have to go. About the 20th of November, 1895, he came into the bank, and I cut off the coupons for him, and he took them to New Orleans when he left.

I remember when he cam- back in 1896, some time in May, and that he had shipped up the remainder of the bonds just before leaving. I received them on the 9th day of May, 1896. I had a number of conversations with him in the season of 1896 with reference to Waukesha being his home. He used to come into the office quite often and sit down and chat with me, and in 1896 he asked me about what I thought about him investing in the brewery up here, and I told him I didn't think it would be a judicious investment for him. He talked two or three times about it, but he never did anything. In the summer of 1896 the city of Waukesha had $15,000 worth of five per cent. bonds, and one day Fabacher called and said, "Your city is going to issue bonds. Are they good?" and I said that if they were legally issued I thought they were all right, but that he had better go and see Mr. Merton, who attend- to most of his law business, as to their legality. He said that he would like to change some of his four per cent. New Orleans bonds and take those five per cent. Waukesha city bonds, as it was a matter of one per cent. more. I told him that would be all right; but before the time came for bidding on the bonds the political situation on the money question had caused bonds to decline all over the United States. He said that about the time he went away the New Orleans bonds were worth par or more than par, and then he showed me two New Orleans Picayune- that quoted the bonds 96 and 98 cents, and for this reason he would not sell his New Orleans bonds and buy ours under those conditions. I have a copy of the New Orleans bonds.

(Counsel for contestant reads copy of said bonds into the record:)

UNITED STATES OF AMERICA, *State of Louisiana, City of New Orleans.*

No. 726. Figures, 1,000; series, 92 C.

15-year 4 Per Cent. Constitutional Bonds.

752 The City of New Orleans hereby acknowledges its indebtedness in the sum of $1,000, which sum said city promises to pay in lawful money of the United States to the bearer 50 years from date, with interest at the rate of four per cent. per annum, payable semi-annually. Dated on the first day of January and July of each year, with interest coupons attached. This bond is numbered and the interest which is payable in the cities of New Orleans and New York at such a bank as the board of liquidation of the city shall designate. It is issued under the authority of and in conformity with the provisions of the constitution amendment and the acts of the June assembly of the State of Louisiana, and offered July 8th, 1890, and secured by a special tax on all the taxable property in the city of New Orleans. $500,000 of those were issued, bonds subject to call after 1925 until 1937, thereafter until maturity, $700,000 annually, and the bonds so redeemed to be determined by lot.

New Orleans, July 1st, 1892.

(Signed) JOHN FITZPATRICK, *Mayor.*
CHARLES W. CANDEE, *Director.*
W. M. MORSELL,
President of the Board of Liquidation of the City.

The coupons attached, of which the following is a copy of all: The city of New Orleans, No. 33. To the right: "Will pay bearer $20 on the 1st day of January, 1909, being six months' interest on the constitutional bond No. 726. Signed W. M. Morsell, president." $20 in figures, and also on the end two coupons each year.

The inventory of property of Joseph Fabacher marked Exhibit 6; Broderick note, No. 7; Broderick note, No. 8; receipt, No. 9; Broderick note, No. 10; J. H. S., reporter.

The total real estate and personal property was $64,854.49, not including three horses and one double harness, one single harness, and one double carriage, one two-seat surrey, one phaeton, one road cart, folding bed, 4 mattresses, which were in fact taken by the widow without the consent of the heirs here on March 25th, 1897, and shipped out of the State.

753 Mr. Fabacher told me that he had been in the restraurant business in the city of New Orleans and had made a large amount of money at it, but that he sold the restaurant business to Lawrence Fabacher. In 1895, when he came here, he said he had sold his home and that he had no other home but this one here; that was in 1895. About the time he was having his will drawn he spoke to me about voting here in the fall of 1896. He

called into the bank and said, "Mr. Frame, I am going to make my will and I want you to be my executor," and I joked with him a little then and says to him, "I shall have to ask two or three questions first before I can consent," and I asked him what his property consisted of, saying at the same time if he had any property in New Orleans that would call me there that I couldn't take it, because the institution which I was engaged in required my services here, and I couldn't very well leave for any material length of time, and he said, "That is all right; I have no property in New Orleans; it is all now in the Waukesha national bank and in my home on the hill." The bonds which he received in 1895 and 1896 were the proceeds of the sale of his home and restaurant, and that he had no other real estate in New Orleans. I then asked him where he voted or have you voted lately, and he said, "Not for two or three years;" I said, "Where would you vote if you had to vote?" and he said, "In Waukesha; I have no home in New Orleans, I sold it." Before he got through he said he was going to vote in Waukesha next month, and I said, "I don't see but what that settles it; your residence is in Waukesha; I can't see any objection to your making your will here if that is the case; all your property is here, so it don't take me away, and I will consent to act." He chatted a few moments more and, I think, he told me who his children were, gave me their names, with the exception of a child by his first wife, which he did not mention, neither did he say anything of his first wife. He mentioned his son Lawrence, but said that he didn't give him anything because he was worth more than he was; that he sold him some property and sold it very cheap,
754 and thought if he didn't get anything he did fair by him anyway. He didn't tell me the contents of the will; he simply referred to his children. The will was kept in his private box in the Waukesha national bank; it was opened March 25th, 1897, in the presence of Mr. Merton, Mrs. Fabacher, Lawrence Fabacher, and Theodore Broderick, and perhaps one or two others.

Cross-examination:

I think he told me he had eleven children. I don't remember that he said how often he had been married. I don't think he did. He did not tell me he had a divorced wife; I didn't know anything about any other wife. He did not have this conversation with me on the day the will was drawn that I know of.

From May 12th, 1896, to January 9, 1897, he had deposited in our bank to his credit the sum of $1,160.00, and from May 6, 1896, to March 3, 1897, he drew out $1,936.61. He did not tell me that during that period of time he had on deposit in New Orleans over $13,000. I don't remember that he told me that he had any bank account in New Orleans. He may have referred to it, but I don't remember. Generally all the money we got in our bank came from the New Orleans bank or New York exchange. These remittances were sent up here on drafts issued by himself on New York and requested to be placed to his credit.

I have got an inventory of his property here. This is the original on file in the county court. Lawrence Fabacher gave me a note of $3,000, payable on demand, drawn by Theodore Broderick, on March 25th, 1897. I never visited Joseph Fabacher in New Orleans. Prior to 1895 he told me that he had a residence there.

Q. Did you ever hear him say he had a residence there?

A. Yes, sir; previous to 1895.

Q. When did he last tell you that?

A. When he came back in 1895, the first. I have heretofore testified he said he had sold it.

Q. Did he tell you he had a place there that he rented from his son Lawrence; a residence?

755 A. I think he told me Lawrence had fixed up a home and tendered it to him.

Q. When was that; in 1895?

A. I think he referred to it before he was going away.

Q. In 1895?

A. Yes, sir.

Q. Did he tell you he had accepted of the tender; didn't he tell you if you came down to New Orleans to come and see him?

A. Oh, he repeatedly asked me to do that; to come and visit him.

Q. Didn't he tell you Lawrence had tendered him a home, and that when you come to New Orleans you must come and see him at his home?

A. Oh, he tendered him a house and told him to live in it.

Q. Did he invite you to come there and stay with him?

A. He repeatedly done that.

Q. Didn't he tell you afterwards in 1896 that he had a residence there; that he occupied it; and didn't he tender you again an invitation before he went away in 1896 to come and see him there?

A. He said that he lived in the house, and I think he told me he insisted upon paying Lawrence rent, etc., but he said he wouldn't take any property.

Q. He lived in the house and paid Lawrence rent and asked you to come and see him?

A. He done that repeatedly every year he was here. He was absent from Waukesha during the winter months. In 1895 he went away in December and returned about the 10th or 12th of May, 1896, and went away about the 17th of November, 1896; went to New Orleans and died there. I do not recollect whether or not he told me he owned furniture there in New Orleans; he may have done so.

Redirect examination:

This is a copy of the bank account kept by the Waukesha national bank for four years from 1893 up to the time of his
756 death, and shows a balance in our bank at that time. When he went away in the fall of 1896 he expressed himself as going to come back early in the spring; as soon as "ma" would come.

The balance in our bank in favor of Fabacher was $91.56.

COUNSEL FOR PROPONENT: I offer in evidence the bank account, marked Exhibit 11.

According to this bank account, there was a balance due Fabacher on December 21st, 1895, of $968.17. March 23, 1896, a hundred dollars was drawn; so that stood all winter. I have not learned of any account in any other bank since I was appointed executor. I made inquiries of the children, but I have not been able to find anything in his favor. I was not furnished with the deposit book of the New Orleans national bank. I never saw the cancelled checks and stub check book of Joseph Fabacher with that bank.

Recross-examination:

In the banking business we have an exact copy of the bank book kept by us, and that you have is a transcript of our deposit ledger; it corresponds with the bank book.

E. MERTON, being recalled, testified as follows:

Mr. Fabacher spoke to me about making an investment in the water works; this was in the fall of 1895, the time I put the mains up that street. He asked me what I supposed it could be purchased for, and said he had great faith in Col. Enos and wanted him to go into the deal with him. Previous to the time we were drilling the well there at the water works he talked to me about voting, and said that he had been talking to Col. Enos about voting, and that the Colonel said he must be a resident of the city of Waukesha and in the State of Wisconsin for one year continuously in order to entitle him to vote; and I said, "Where do you claim your home is?" and he said, "I claim it here; I have not any home anywheres else." He said that last spring they wanted him to vote—a friend of his was running for mayor of the city of New Or-
757 leans—and that he refused to vote. He says, I told them I was not a citizen of New Orleans; that he belonged to Wisconsin; and I says, Well, if that is your intention, to come here and make it your home and be a citizen of the State, you have a right to vote. The fact that you are not here part of the time, but are away for temporary purposes, cuts no figure. I asked him if he only went to New Orleans to visit, and he said, "That is all; some time in the winter." My recollection is that Mr. Buck was the friend; that they urged him to vote for him when he was a candidate for mayor of New Orleans. He registered to do so. I went to Chicago since this trial began for the purpose of getting the register at the Leland hotel. Lawrence Fabacher went with me. We got two hotel registers from Mr. Keeley, the gentleman whose deposition was taken.

COUNSEL FOR PROPONENT: I offer in evidence the register of the Leland hotel, December 5th, 1895.

Mr. Keeley told me that this was the register referred to in his deposition. I find the signature of Joseph Fabacher, Mrs. Fa-

bacher, L. Fabacher, and the word- New Orleans, La., and the letter D opposite to that. The names Joseph Fabacher, Mrs. Fabacher, and L. Fabacher are in the same handwriting; the words New Orleans, Louisiana, is not, in my opinion.

COUNSEL FOR PROPONENT: I offer in evidence this register.

I got another register, spoken of in the deposition under date of May 10, 1896; this is the date referred to in the deposition. I find Joseph Fabacher and family, New Orleans, La. That is not all in the same handwriting; the word- "and family" is not. The date is May 10, 1896.

COUNSEL FOR PROPONENT: I offer in evidence the register, page — of register, marked Exhibit 12 and 13 respectively.

COUNSEL FOR PROPONENT: We will either retain the books or get a copy of them.

Cross-examination:

I don't claim to be a genuine expert in handwriting, but I think I know Mr. Fabacher's handwritiag when I see it. I think
758 that the signature of Joseph Fabacher, on December 5, is in his own handwriting, and that his signature on May 10, 1896, is not his handwriting; also the words New Orleans, La., under date of May 10, 1896, is not his handwriting.

Redirect examination:

The word- "New Orleans," under date December 5, 1895, and the words "and family," May 10th, is not in the handwriting of Mr. Fabacher.

LAWRENCE FABACHER, being sworn for the proponent, testified as follows:

I reside in the city of New Orleans, Louisiana, and was born there. I am 34 years of age. My father's name was Joseph Fabacher and my mother's maiden name was Magdalene Frey.

I have nine brothers and two sisters and one half-sister living. The names of our family, commencing with the eldest, is Joseph H. Fabacher, who resides at Tripoli, Louisiana, and keeps a large store; he is 40 years of age; Albert Fabacher, who keeps a grocery store at the corner of Prytania and General Taylor street-, New Orleans; he must be about three years younger then Joseph; then myself, Lawrence, 34; then comes Anthony Fabacher, who must be about two years younger then I; then comes Louis, who must be two years younger then Anthony; then comes Peter; he must be two years younger then Louis; I can't state exactly; and then John, and then Barbara, now Mrs. Broderick; her husband's name is Theodore Broderick; then comes Alois Fabacher and Magdalena, and then Jake, and my step-sister, Antoinette Thorman.

Antoinette Thorman is my half-sister, and all these children are of full age except Magdalena and Jacob. I understand that Jakie

was 15 years of age and Magdalena 18 or 19, and, with the exception of Joseph, I understand they are all in the city of New Orleans. My father was born, I understand, in Busenburg, Germany; he lived a number of years, and the last business he was engaged in was managing a restaurant and hotel, known as "Fabacher's
759 restaurant and hotel," at Raleigh and Custom-house, in the city of New Orleans; it was the largest business of this kind in the city. I succeeded my father in that business, and the place is now known as "Lawrence Fabacher and Brothers." We have enlarged it since my father sold it to me. My father retired from business in 1887 or 1888, and I bought the business at that time, and I rented the property from him, and afterwards bought the real estate from him in 1894. I paid him $50,000 for the real estate in a $50,000 check; it was not my own check; I borrowed the money. The same check was made payable to me and I endorsed it to him. I considered it a good, fair price for it; I would be glad to get it today.

In 1894, when I bought this restaurant property, my father owned other real estate in the city of New Orleans. He owned a residence on Prytania street and two two-story houses to the right of his residence, and to the left of his residence he owned a double cottage and market, and also a dwelling-house; it was a story and a half. In 1895 he sold his home on Prytania street to Theodore Broderick for $10,000. I think that was a reasonable price for this residence. The rest of the property was sold at auction. This is a customary way to dispose of property when you want to get rid of it and get anybody to buy it directly. This way is resorted to quite frequently; I have bought some that way. I consider the spring of the year the best season to market real estate. The reason for this, as I understand it, seems to be that the crops are moved off at this time, and money can be borrowed easier in the spring than at any other time, as the money for these products—cotton, sugar, and rice—begins to circulate about January or February in each year. I do not recollect what my father got for the other properties; it was generally thought by everybody that he got a fair and reasonable price. My father was not indebted at that time that I know of. My father began to visit Waukesha quite a while ago, and after 1888, when he sold out his business to me, he came right along; I think that before he sold out in 1888 he was here and spent
760 just a few months. After he sold out the restaurant he was not interested in any other business. I remember the fact of his building a house in Waukesha in the fall of 1893 or the winter of 1894. In 1893 he started to build it. I was visiting at the hotel, and he took me up on the hill and asked me to see if that was a comfortable —, as I had planned and built a number of houses; he asked my advice. I thought that it would make a comfortable home if he would make a few additions. To my knowledge, my father came to Waukesha to stay permanently. He had been coming right along, but in 1895 he sold out everything and stated he wanted to come to Waukesha to live, it agreed with him

so well; he felt better up here, and he said that he wanted to be here and stay.

In 1895 he sold his home in New Orleans where he resided; broke up the house and gave the furniture to the different children, such parts of it as he did not want to take with him, and he got a car and put everything in and brought it here, the furniture and three horses, I believe, and one of the ponies I think he took out with him and a buggy; he also brought a colored boy with him to take care of the horses on the way up. They would not allow him to ship them without a man on the car and the colored boy came along. The balance of his furniture and pictures were distributed among his children, Louis, Peter, and Barbara, and the balance he brought up here in 1895.

I had frequent conversations with him about his coming to live at Waukesha. He always wanted to come here to live and he wanted to make this his home; he liked it and it agreed with him; he felt much better here; he came back in the month of December, 1895. I know he didn't want to come back, but did come back because mother wanted to come and see the children. She didn't want to stay up here all winter without seeing the children for Christmas. I built the house on Calhoun street, in the city of New Orleans, where my father resided in 1895 and 1896. I did that for the reason that when he sold the property—that is, the homestead on Prytania street—mother came to me and said, "Papa is selling everything and wants to come to Waukesha and stay there, and I will not be able
761 to get to see the children." I told her not to worry about that. You can come down, as I don't think he will want to stay up there altogether, and she said, "No; we have got no place to come," and I told her not to worry about that; that I would see that when the time came that you have a place to stop, and I agreed to make an effort to get him to come down; several times I did, but he said he wouldn't come; it was so strange. I gave her the money to come so she could insist on his coming with her, and I would take care of the balance of it. My brothers are all married and have young families, about four children in each family, and Jacob and Lena lived with their parents. I selected the plans for the house on Calhoun street and made the contract and paid for building it with my own money. I have other property besides the Calhoun residence. I bought all the furniture in the Calhoun residence. When they came down in December, 1895, I, together with my brothers Peter, Anthony, and Albert, met our parents at the depot and took them to the house on Calhoun street, which I had prepared for mother. We had a family reception; we were glad to have them come down for Christmas; we had a family reunion; we had the table ready and everything in shape to take supper. I took the silverware and Peter furnished the cook, and we had a good supper and everything was made comfortable. My father did not want to come to the Calhoun Street residence; he wanted to go to the hotel, but mother knew we could not make him comfortable at the hotel, as he was disagreeable in ways and required constant care; he wanted his own way about eating; he wanted his sour milk, and

mother could not make that in the hotel; he did not want to go to the family of any of his children; he wouldn't stop with any of us; mother may have known that this Calhoun residence was built. I don't know as father did. I told mother I would look into it and see that when the time came that they had a place to come and live when they were in New Orleans. I still own that Calhoun Street property. My father did not pay me rent in 1895; the next
762 year he asked me what rent I was going to charge him, and I told him I didn't know; that he could pay me whatever he thought was right, and he wanted to know what was right, and I told him that I did not know what he called right, but told him that I didn't want to fix the rent because he might think I was taking the advantage of him, but finally it was agreed he would pay six per cent. of what I paid for the house, and he paid me rent at six per cent. on the cost of the house, which was $7,200; that was just the house.

The question concerning the furniture in the house came up before the rent question or at the same time. He said, You bought too nice furniture, and I told him I did not think so; that I could afford to have that, and that it didn't make any difference to him, for he was not paying for it, and he said, "I don't want to sleep in nobody's bed." I told him that there was a remedy for it. If he wished to pay for it he might do so, and finally he paid for the furniture. I had the mattresses made and everything completed. My father was very independent; he wanted to have his own way and not to be under any obligations. When he made up his mind to anything he was going to carry it out.

He died on the third of March, 1897, at the Touro infirmary, in the city of New Orleans. Father took lunch with me every day at the restaurant. In fact, he would wait until I came. I would be delayed. I am president of a brewery, and we always had lunch together, and I was telling him about buying a pair of horses, and I had heard something about the offer and I didn't know nothing about it, and he went with me and he says, "Let me see them before you buy," and I, to satisfy him, says, "Go and look at them," and we got into a buggy and went around to the stable, and he says, "Don't buy them; they are too bony;" and I didn't buy them; and one day we took a ride around to look at some horses which I wanted to buy, and when we got through I let him out of the buggy and he took the car; that was shortly before he was taken to the infirmary. It seemed that after he got home and had supper that night he was troubled with his old ailment. His bowels came out occasionally, and they said they came out. They got the doctor that night, but failed to get them back, and Monday morning mamma came and told me that father was very sick, and that I should come and get Dr. Lacom, and he went right away. The doctor went up to see my father, and a telephone came to me at the restaurant that I must get a carriage; that papa must be taken to the Touro infirmary. Of course I ordered a carriage and
763 drove up there and I went along, and when I got home he was in bed, and mamma said it must be pretty serious, for

he must be taken to the infirmary. My father consented to go, and he and I and my mother took the carriage and we drove down to the Touro infirmary, where the doctors were waiting us. He was taken there and operated upon by Doctor Lacoin, the doctor whose deposition was read.

Previous to his being taken sick I know he was making arrangements to go to Waukesha right after Mardi Gras, which was on the 2nd of March, and that he was making arrangements to get Jake to come afterwards. My father was buried in New Orleans.

My father was drafted as a jury in the city of New Orleans. It seems there was a juror notice served on him at the restaurant. It laid on my desk, and when he came down I told him that they wanted him here on the jury, and he said, "He was no juror here; I don't belong here any more; I belong at Waukesha." I told him he had better go up and answer, or else they might fine him. He said he could not go, and asked me to go up for him, but I took him up and went in, and he told them that he was an old gentleman, too old, and next that he did not reside here. They told him all right; that there was so many Fabachers that they didn't know. I believe this was in 1896 or 1897. It must have been in 1896; it might have been just before his death. I don't know if anybody else was there when we had this conversation, but Samuel Gross, my private secretary, saw this. He is the one whose deposition was read here. He is my book-keeper; he attended to all my correspondence. He is married to a daughter of this contestant; her maiden name was Pauline Troy. Mathias Troy is a son of the contestant by her first husband; there are no children by her second husband; his name is Thorman. Up to the time of his death the family of Antoinette Thorman had been in our employ. Fanny Troy was our cashier. She succeeded Pauline, who is now Mrs. Samuel Gross. Mrs. Gross was our cashier nine years. Her sister, I believe, has been there four or five years.

764 We were on friendly terms with Antoinette. Fanny Troy is godmother to one of my children. When father sold out his property Antoinette Thorman, this contestant, came to see me about it in the spring of 1895. She came to me and said, "Papa is selling all his property," and I said I believed he had, and she said, "I would like him to get me a house that is about to be sold down there. I would like very much for him to buy that." I told her that she must go and see him and speak to him about it, and I believe she said she had, and that she came to me to ask me to intercede for her, and she said she knew papa had got his mind made up, and she wanted me to see him, and I told her I would if I could do any good, and some time before he left he was in my office, and I told him that Antoinette was in to see me, and that she would like you to buy her a house down there that is about to be sold, and that she don't think it would cost very much, and she would like you to buy it for her. I told him that he might do that for her, seeing that he was going away, and he said "he didn't want to buy anything for that drunken fellow." I told him that he was buying it for her, and finally the result was that Peter Fabacher

went down and found the house, and it was bought. This Peter Fabacher is a cousin of mine. He is a son of my father's brother. I don't know how much they paid for that house; I heard something like eighteen hundred. He left some five hundred odd dollars with me to be paid after certain repairs and changes were made. This was in the spring of 1895. This spring my father did not go to Waukesha as early as usual. He was delayed in selling out his property and getting rid of his business interests.

My father owned a large family tomb in St. Joseph's cemetery, in the city of New Orleans. I have seen this photograph of it taken after the burial of my father, and the flowers that are represented there were brought there at the time of the funeral. I am the owner of that tomb now. About a month or six weeks ago the auctioneer came to me and told me that my father's tomb had been placed in his hands for sale, and that if I would like to buy it I could buy it privately yet. I asked who had it for sale, and he said, Kin-
765 ning, and as he had been a friend of mine—you have bought lots of property from him—that you might buy this before he sold it at auction. He said it was placed in his hands for sale at $2,000, and then I told him I didn't care to buy it. That was all the satisfaction I gave him, and I went up and see Mr. Buck, and finally before it was sold I bought it and gave a check for it, payable to Mr. McCaleb, in the sum of $2,000. This is a copy of the bill of sale.

(Conceded by counsel to be a transcript copy of the original.)
Offered in evidence. Marked "Exhibit 14."

For and in consideration of the sum of $2,000 to me cash in hand paid, I hereby sell, transfer, and set over and assign and deliver to Lawrence Fabacher, as heir of Joseph Fabacher, deceased, all my right, title, and interest in and to the household furniture situated in the premises No. 1716 Calhoun street and Essex street, in the home of Joseph Fabacher, No. 52941, docket civil district court for the parish of Orleans, division B, in which Mrs. Magdalena Frey Fabacher and Lawrence Joseph Fabacher are made defendants, and also all my right, title, and interest, as heir of Joseph Fabacher, in and to two certain lots of ground, together with the marble tomb situated on said lots in St. Joseph's cemetery No. 2, bearing the inscription, "Family tomb of Joseph Fabacher;" also two galvanized-iron benches and five vases.

In testimony whereof I have hereunto signed my name on this 5th day of November, 1897.

(Signed) MRS. ANTOINETTE THORMAN.

I authorize my wife to sign.

CHARLES W. THORMAN.

Witness and signed:

E. HOWARD McCALEB, JR.

When my father attended church he attended the Catholic church. In the year 1895 and 1896 he had no pew in any church in the city of New Orleans. When he was there he attended the church

of the Immaculate Conception, on Barone street, in which I had a pew, which he occupied when he went to church. While he lived there the family attended the church of Our Lady of Good Counsel. He had a pew in that church. It was given up in 1895, when he sold out.

I think the last time that my father voted in the city of New Orleans was when Mr. Buck ran for Congress, in the fall of 1894. He moved out of the ward in 1895 and went into another ward. I don't think he ever voted after that in New Orleans. I remember one day he and I were standing together in the restaurant, and a gentleman named Malone came in and said, "Mr. Fabacher, your friend, Mr. Buck, is running for mayor, and there is going to be a hot fight for the vote." I remember that he said, "I can't vote here. I am not a resident here." That was in 1896, and that Mr. Buck was the counsel here. I never owned any interest in property here at Waukesha, and neither did I ever appl[illegible] to Constantine and Fuller for any insurance, and neither did I direct or authorize anybody to negotiate any insurance for me here. My father first started the restaurant business on Raleigh street, in New Orleans, in 1880 or 1881. He had no property at that time. At the
766 time he started, the restaurant was 29 x 59 feet and contained about eight tables. My mother cooked, and we were waiters in the dining-room. Before this time my father, I understand, had some property. I understand he lost it out in the country, on a plantation and a saw-mill, I believe it was. He made a great bulk of the money that he had left since he started in business on Raleigh street. He had nothing until that time. We always did the work ourselves. He started the latter part of 1880 or the beginning of 1881. I can't recollect. At the time of the New Orleans exposition we got into Custom-house street. We were all working, the four boys, and mother cooking, and then we got more help, and there made considerable money.

After the exposition my brother Albert left, and I stayed with my father, and he gave me an interest in the business after 1885, and this arrangement continued until 1888, when I bought him out altogether. My father's ways of doing business were not up to the times. He didn't want to improve, and I saw there had to be improvements made and told him that it had to be done or else we would lose everything we had. He would not give in, and finally I told him that I was going to leave, and that they would have to buy me out. It run on this way for a couple of months, and finally he put a price on it.

In the summer of 1886 my father went to Europe and left me a power of attorney so that I could draw $2,000 to do business until he returned; but business kept up good, and I never drew a cent out; I didn't need it. I never saw the power of attorney from that time on; never exercised it. I never did anything for my father as agent down there. He had his own signature and I could not use that any more. During the time we were in business together I had authority to sign checks in the name of Joseph Fabacher and Son. The furniture mentioned in the bill of sale of the tomb was

included in this way: It seems they wanted $2,000 for the tomb, and — Mr. Buck that if they would add in the furniture
767 there would be no trouble, and I would consent to give the $2,000, and that was the result. The violin inventoried in the list belonged to my brother John. It was inventoried at $100. I think it was pretty high. It was inventoried by somebody who called himself an officer of the court; came up and inventoried it one day. There was a bath in the house that belonged to me—it belonged to the property. It was inventoried.

Q. The violin was inventoried $100. How much is it worth?

A. Johnny was there at the time and laughed over it, and said, "They have got that down $100." He says, "I would like to sell it for $100."

Motion to strike out the answer. Sustained. Exception taken.

I know that this violin did not belong to my father. There was also a lot of books belonging to my brother John, and these wash-tubs didn't belong to my father. They were stationary and belong to the house, and also a number of holy pictures that were a present to my mother. The piano which is inventoried at $100 was given to my sister, Mrs. Broderick, and when I got the house ready I asked her if they couldn't send it up in the parlor, and she says, I have no objection.

The piano is pretty old; father bought it many years ago and paid $50 for it. It is inventoried at $100. It was second hand when my father bought it.

The chandeliers in the house belonged to me. I bought them myself and had them put in the house. There must have been five large ones and eight small ones.

There was a bath-room in the house had a porcelain-lined bath-tub. I cannot say that the bath-tub was inventoried. There was also a stationary washstand and stationary closets. They belonged to the building.

Cross-examination:

I cannot say upon what bank the check was given for the purchase of the restaurant property. I borrowed the money of
768 Mr. Mashay, and I don't remember what bank it was on. I do not remember whether my father collected it or merely deposited the check. He must have deposited it to his credit. He was doing business with the New Orleans national bank. He had no other bank there that I know of. In 1888 I bought out his interest in the restaurant business for $10,000 and rented the property from him afterwards. I paid him $400 a month rent. I had a lease for it for three years at $4,800 a year. I cannot say what he did with the proceeds of that property; he handled his own business; I think he invested some of it in city bonds. He may have consulted me in regard to what was a safe security to invest money in. I told him I couldn't say. I says, You better go to your old friend, Mr. Smith, of the firm of Smith & Seigler, and Smith advised him to put it in bonds, and he bought them himself. He bought

them from different people. In August, 1895, I commenced to build the 1716 Calhoun Street property, and the house was finished about two days before they got there, which was about the 6th of December, 1895.

I bought certain furniture for the house from Grant & Young. I have a bill of it at home. The two bed-room sets and a bureau and washstand and two or three chairs and other furniture that I bought from Grant and Young cost six or seven hundred dollars. My father paid me for this furniture; either before he left in 1896 or when he came back, I cannot recollect which; he paid me the amount I paid for it, six or seven hundred dollars, in a check on the New Orleans national bank, I presume.

In the latter part of 1896 he paid the interest on the value of the property at six per cent. as rent for the Calhoun Street property, which cost $7,200. It might have been longer than a year when he paid it. It must have been 18 or 19 months in which he paid the interest on the money invested. I fixed the rate of interest on the price of the property. I cannot say how many months he paid me, but he owed me some when he died; I can't say exactly how much. He never spoke to me about buying that property and I never spoke to him about it, as it was a good investment and
769 I was satisfied that it was a good neighborhood uptown. The house cost $7,200 and the lot cost $2,000; the whole property cost $9,200. My father paid rent on the cost of the house and lot; he didn't want to be under my obligations. He said he was going to pay for that, and I said, Very well, I had no objections. He was a man who wanted to have his own way. He didn't want to be under obligations to anybody.

During the time my father was in Waukesha I did not have much correspondence with him. I may have written a letter occasionally and he wrote to me some time. He told me that when he went away in the spring that he was going to take that house no more, and I told him it was immaterial to me; I didn't care. When he had gone away I hired a watchman, who occupied it, on account of the insurance. My father had one of Peter's cows. He borrowed the cow from Peter, as he liked his sour milk every day, and we all have our cows at home. After my father's death there was a valuable package put in my safe. It contained his watch and a note of $3,000. Mother has the watch, and the note of $3,000 was brought here to Waukesha, after his death, and delivered to Mr. Frame.

After father was taken to the Touro infirmary and operate- on, toward the latter part of his sickness the doctor gave orders to let nobody in to see him. I believe Mrs. Thorman says she went there and went in and see my father. I think that the clerk at the Touro infirmary registered my father at the hospital; I don't know; I did not give him his occupation, neither did I give him his name, age, or nativity; I was to- busy that morning; they knew he lived opposite the infirmary several years, and they knew as much as I did.

Q. Isn't it a fact you told David Glodstein, the clerk of the Touro infirmary, that at that time, and didn't he write it down as the words fell hot from your lips, that he had no occupation, and that

his name was Joseph Fabacher, that he was 72 years of age, that his nativity was German, that his residence was New Orleans 42 years, his social condition that he was married?

A. I don't recollect giving any such——

770 Objected to. Objection overruled. Exception taken.

Q. Didn't you give to Mr. David Goldstein, the clerk in charge of the Touro infirmary, your father's age on the 23rd day of February, 1897?

A. I don't believe I did.

Q. Didn't you give him his nativity; that he was 72 years old; that he was a native of Germany?

A. I answer the same.

Q. You say, no? Didn't you tell him his residence was New Orleans? Do you say you don't know or no?

A. I can't recollect I did. I say I don't think I did.

Q. Are you positive?

A. I am most positive, because I was too busy that morning to bother for that.

Q. Is your memory clear of what occurred that at that time, or were you in such a mental condition that you didn't remember what occurred?

A. I was pretty well worried and bothered.

Q. Wasn't you very much worried and under a great mental strain because of your father's condition?

A. I was.

Q. Can you at this time testify exactly to what occurred at that time when your mind was in that condition?

A. I recollect this testimony when it was taken; how I come to know that I didn't remember that, that you gave those questions when you took it in New Orleans.

I have authority to represent my brothers and sisters and my mother in this contest and have been in constant attendance at the taking of the testimony of both proponents and contestants in New Orleans, and was here and testified before the probate court last July.

I think it is a fact that the husband of Antoinette Thorman keeps a little charcoal establishment, and that Antoinette Thorman lives in the house my father gave to her children. I have not been down to see them, but I have been told so.

Q. Antoinette Thorman has the reputation of being a virtuous, nice, good woman, hasn't she?

A. It didn't seem so when she got married the last time.

Q. Wasn't it thirteen months after the death of her husband before she got married?

771 A. I couldn't say.

Q. Is it a fact that her husband is a drunkard?

A. It seems so; much as I have heard say.

Q. Do you know anything against her reputation?

A. No; I don't.

I know that when she got married the children left, and I was

told they went up to live with father, and the boy went to renting a room. I know it to be a fact that my mother refused to allow the sheriff to enter the house to take an inventory of the property after the death of my father at New Orleans until we got instructions from Mr. Buck. As an outcome of some litigation that was had in 1894 I learned of the marital relations of my father and mother. I heard that my father's other wife was coming back to New Orleans; for what, I did not know. I went to consult counsel with reference to this matter.

Q. When did you consult counsel?

A. It might have been 1894 or 1895. I don't recollect.

Q. What counsel did you tell it to?

Objected to.

By the COURT: It isn't admissible. I think if he objects to the answer on the ground of a professional communication he ought not to be compelled to answer. It doesn't amount to anything, what the advice was. It is what he did.

Exception taken.

Q. Did you communicate to your father the result of the advice given by counsel?

A. I did.

Q. By what counsel was that advice given?

A. Mr. Buck.

Q. Then, what did your father do?

A. He went and saw him.

Q. And what did your father tell you was the result of his interview with Mr. Buck?

Objected to by proponent. Objection overruled.

772 A. He said something was wrong with his marriage.

Q. Weren't you asked at the former testimony what he told you as to Buck?

A. He told me his marriage wasn't legal under the laws of Louisiana.

Objected to by proponent.

By the COURT: I have passed upon that.

Exception taken.

Q. You may state what you did. You advised your father to go and see him, and he did consult Mr. Buck on that subject?

A. That's about it. I think this was in 1894. I don't know whether Mr. Buck gave my father a written or verbal opinion of the result of this interview.

The result of this interview was that my father and mother were married here.

COUNSEL FOR CONTESTANT: I offer in evidence the certificate of marriage, solemnized at Milwaukee, Wisconsin, September 30, 1895.

Q. How long before this marriage in Milwaukee, on the 30th day of September, 1895, was it your father consulted Mr. Buck?

A. I think it was in 1894. I can't exactly say when. I don't recollect.

Q. The result of that was that he sold his property down there?

A. I couldn't say.

Q. You knew it might be difficult in Louisiana about the status of the children of your mother?

A. From the advice of Mr. Buck; yes, sir.

Q. That was why you advised your father to go and see him?

A. The result of Mr. Buck's advise to me. I advised my father to go and see him.

773 My brother Jakie was 15 years of age in 1897. He is two years and some months older than my sister Magdalena. My brother Alois was about 20 or 21 in 1895. My brother John is older than Alois and older than Mrs. Broderick. Prior to the time he died he had his account in the bank overdrawn $11.91, and it was brought to my notice after his death, and I paid the sum.

Redirect examination:

There were some vases and iron sofas that were inventoried in connection with the tomb which were placed there by myself after my father's death, that consisted of two galvanized-iron benches for two people to sit on; they cost $20 apiece; and two marble vases to put flowers in that cost me $25; they were placed by me after my father's death. I had 13 photographs of the tomb made and gave one to each of the children, and Mr. Samuel Gross got one. He is the husband of a daughter of the contestant, and I gave one also to Miss Fanny Troy, another daughter of the contestant.

My brother Jakie went to school at Spring Hill college, in the State of Alabama. He went down there from Waukesha alone to attend school in September, 1896. Spring Hill college is about 120 miles from New Orleans. He also attended there in 1895.

The municipal election in New Orleans in 1896 was a very exciting election. It was held in the month of April, 1896. There was an unusual large vote polled that year. They turned out on both sides very strong. Every one was solicited to vote that possibly could.

Q. Do you remember about the improvements made in the house bought for Antoinette?

A. Yes, sir.

Q. Is that the contract?

A. I think that is the one.

COUNSEL FOR PROPONENT: I offer this in evidence, marked Exhibit O; contains the following:

NEW ORLEANS, *May 4th*, 1895.

This — to certify that Joseph A. Phelie & Brothers hereby agree to repair the double cottage house on Desire street near Rampart street for Mr. Joseph Fabacher according to the specifications fur-

nished by us, the undersigned carpenters and contractors, for the sum of $525.

(Signed) JOSEPH A. PHELIE & BROTHERS.
JOSEPH FABACHER.

774 These repairs were put on the house and the money was left with me to be paid for when done. The property was deeded to the children of Antoinette Thorman, and she was given a life estate in it.

In the spring of 1896 he came and notified me and said, "I don't want that house any more." This was the house on 1716 Calhoun street, and I said, All right. He said, "I am not going to pay anything for it," and I said, All right, and he said, "Take notice I don't want that house any more." I said, All right; it will stand there; it ain't eating any bread.

I am a man of considerable means. I am worth about $200,000. I am president of the brewery, and have lots of stock in it.

Recross-examination:

Jakie went to Spring Hill college in 1896. He may have gone also the latter part of 1895. My father went to see the Jesuits to get his schooling rates, because they made better prices to friends of the institution, and I being a friend of the institution, I got the benefit of that.

Redirect examination:

Myself and the rest of the children, except the youngest, did not get college advantages; we were kept at work. My father was not a strict churchman, but my mother was very strict.

When Jakie went to school at the Jesuits' school in New Orleans, before his parents came down from Waukesha, he live- and boarded with my sister Mrs. Broderick.

COUNSEL FOR PROPONENT: We offer in evidence the act of settlement of the property rights between the deceased Mr. Fabacher and his first wife, executed in France on the 20th of August, 1868, duly attested by the American consul at Strasburg, embracing also a copy of the judgment of separation of the property between them, and in that connection I offer in evidence from a book which the gentleman has filed, the Civil Code of Louisiana, more especially articles 24 and 75, with reference to the separation of property between husband and wife; article 46, in reference to the manner of settlement of such property rights, and the articles 2402 and 2406; which was received in evidence.

775 By the COURT: It is received for what it is worth.

Marked Exhibit J. H. J.

COUNSEL FOR PROPONENT: I offer in evidence from the laws of Louisiana, especially Civil Code, article 1621, paragraph 10, on the subject of the power of a parent to disinherit a child.

Article 916 of the Civil Code, which defines the rights of the widow in the community under the laws of Louisiana.

Also I make a special tender in her own behalf of the marriage certificate offered by counsel on the other side.

Marriage certificate executed in Wisconsin on September 30th, 1895, and also in the parish of Saint Landry, State of Louisiana, in July, 1874.

We also join in offering the act of donation from Joseph Fabacher to the children of Antoinette Thorman and Antoinette Thorman herself, and dated June 17th, 1895.

PETER FABACHER, being sworn for the proponent, testified as follows:

I live in the city of New Orleans. Joseph Fabacher was my father's brother. I have lived in New Orleans since 1853. At that time I was ten years of age. My uncle, Joseph Fabacher, came from Busenburg, Germany; he was a German, and was living at New Orleans when I came there. I came there with my parents, both of whom died in New Orleans. The climate in that part of Germany where I came from was nearly like this; we had very cold winters.

My business is a drayman; I haul cotton and sugar and everything for everybody; have been at this business since 1861. I am acquainted with all the family of my deceased uncle and have known them ever since they were born. I was acquainted with the first wife of Joseph Fabacher. She died about eight months after they were married. I was acquainted with his second wife and also with his present widow. When my uncle came to this country he kept a bar-room for three or four years in New Orleans. After that he went into the lumber-yard business for about four or five
776 years, and then went into the bar-room business again for about eight months, then, I think, during the war, he had a brewery in his district a couple of years, and then had a distillery, and later on started a grocery on the corner of Washington and Fulton streets; then he sold out and went up in the country to the parish of Saint Landry. Here he was a farmer, running a plantation; I believe he held the post-office there. Before he went up to the parish of Saint Landry he had accumulated some money, but he lost nearly all of it up there. He came down from the country and opened up a bar-room in Corveet street between the St. Charles. He sold that out and started another between Chapathl and Maxon street, and later on sold that out and started a restaurant in Royal and Custom-house place, where the present Fabacher restaurant is located; he started small. It used to be a shoemaker shop; the boys did the work, and furniture was made plain, rough tables and put oil-cloth over them, and his wife done the cooking and the boys tended to the restaurant. The place kept growing until it is one of the largest in the city. He made most of the money that he left during the cotton centennial; before that time I don't think he was worth much; I am sure he wasn't worth $1,500 when he came from the parish of Saint Landry.

I am acquainted with Antoinette Thorman; she was born in 1853, and for ten or fifteen years I didn't see her; she never called on me.

I think she had four or five children. Two of the girls worked in the Fabacher restaurant as cashiers. From the time that the Fabacher restaurant started until the present time four or five of the boys worked there. When they were young, four, five, six, or seven years old, they had to work about the restaurant peeling potatoes or doing something of that kind. At the present time I think that Lawrence, Peter, Tony, and John own the restaurant.

In 1894 my uncle had considerable property in the city of New Orleans. He offered to sell it to me first, but I told him I didn't want to buy any property; I had enough. He asked me
777 what he had better do with it, and I said, Put it up at auction. He sold it in 1895. I had conversations with him in relation why he was selling his property, and he said that he wanted to get away; that when he stayed here he was always sick, and that if he stayed he would die. Every time when I saw him after he came down from Wisconsin he looked well and hearty, and when he was down there he looked pale and sickly.

I moved his stuff in 1895. I hauled it down to be shipped to Wisconsin—some furniture; there wasn't much; some bed clothes, mattresses, and feather beds, and the best kitchenware, and some cases, and I shipped them, and I also shipped three horses and a buggy and a carriage; what you call a barouche. That was all he had in the shape of horses and carriages; that was all that he shipped. He left some little, which he gave to the children, but shipped all his horses and carriages.

He said he did this because he wanted to get up there and live and have the family; that he needed to get away from business; that the children were all grown up, and he wanted to get away and live by himself. He told me he had a nice house up there in Wisconsin, and that I should sell out and come up there and live with him. He and I were always friendly.

I had a conversation with Antoinette Thorman about the time her father was going away, and she said that she believed he was going away forever, and that he ought to give her something, and I told her to go down and see him, and she acted rather bashful, and I told her not to be afraid, to go right down and see him. She went down and came back to me in a day afterwards and said that her father sent her back to me, and I told her that I did not know what I could do, and then she asked me to go and see Lawrence. I saw the old gentleman one day, and I said to him that Antoinette wanted him to buy that property. I told him that it was pretty good property. I went and looked at it and bought it for $1,800. He did not want to do that at first, because she had a husband who
778 was a reckless kind of a man, would drink, and he did not want to spend anything to give him the title, so he put the title in the children and gave her the use of it while she lived.

He asked me how much it would take to fix it up and I told him six or seven hundred dollars. I believe he had it fixed over for $500. It was a double house; repaired in good shape. She lives in one side and rents the other; gets $10 or $11 a month.

In 1895 I moved the old man's furniture and property to the depot when he was coming North.

In the fall of 1895 he came back quite late; it was pretty cold. I remember I was at the depot and met him. I met him again when he came back in the fall of 1896. The family lived on Calhoun street, in Lawrence's house, in the winter of 1896. The old man did not want to go up to the Calhoun Street residence when he came back in 1896, but said they forced him to go back and see the children. He could dress himself, with a little assistance from his wife. She helped him. The night they went up in the Calhoun Street residence they had a large family gathering; all of the children were there. Before he was taken sick he was getting ready to go back to Wisconsin. About three weeks before he took sick he said to me that "Just now I have settled up with Lawrence. I paid him his rent; yes; what I paid Lawrence I could board in the St. Charles hotel. I will never come back here again. Quick as I am down here I get sick. It is better living up there." I said to him that I don't believe he meant that, and told him that they would bring him back here dead, and he said, "I don't care if they do or not."

When he spoke about going away that spring he said he would never come back any more. About three weeks before the 3rd of March he told me he was getting ready to go away.

When he moved up here he brought a refrigerator, some mattresses, bed clothes, feather beds, and blankets. He had them wrapped up, and a few cases and three horses, two large and a small one, and a buggy, a barouche. He had chartered a car. He told me to go back to Hobson and buy some charcoal, so his wife has it for winter. He says here it costs 60 to 70 cents a sack.

779 As long as he had a car chartered we might fill it up with that stuff.

He had no home on Prytania street. He sold that. He was buried in the family tomb at New Orleans. He would not have purchased that had it not been for me urging him to do so. I told him that he ought to buy a place for his burial, and he said that "It's time enough when I die."

Antoinette Thorman told me that her father was going away in 1895, and how she come to get the house, and when Lawrence and his mother went up there to Waukesha when the will was supposed to be opened she said that she had ought to have went along, and I told her I didn't think she had anything to do with it; that she was not entitled to anything, and I told her that all she asked for was a home; that her father was very good to her, and I also told her that Lawrence was not willed anything. When we came back I told her I was satisfied Lawrence and the boys would do what was right and Lawrence would never go back on her.

Redirect examination:

I am acquainted with the rate of taxation in the city of New Orleans. It is two cents and some six mills. It is less than three; I forget exactly.

D. S. TULLAR: I will make a formal offer of the appointment of the guardian *ad litem*. I think it is in the original record, but if there is any doubt about it, it is dated March 23rd.

Proponent rests.

COUNSEL FOR CONTESTANT: I offer in evidence the testimony of David Goldstein, taken under stipulation.

Objected to anything but strictly surrebuttal testimony.

COUNSEL: I offer it in evidence as surrebuttal against the testimony of Lawrence Fabacher and for the purpose of impeaching and contradicting him.

By the COURT: You have a right to do that, so far as it tends to show the testimony of Lawrence Fabacher. If it does, it is different from what was first stated.

780 OSCAR SPERBER, recalled, testified as follows:

During the summer and fall of 1896 I wrote a letter for Mr. Fabacher, at his request.

Q. About fixing any stove or stovepipe or anything of the kind?

Objected to, as the letter is the best evidence.

By the COURT: The party who received the letter would have to produce it.

COUNSEL: We propose to prove by the witness prior to Mr. Fabacher's departure from New Orleans this witness wrote a letter for him to a man in New Orleans, requesting him to fix up the stovepipe in this house at 1716 Calhoun street.

By the COURT: There is no difference whether it is the letter or the statement; I think it is proper to be received.

Q. Can you state what it was substantially that Mr. Fabacher told you to do and what he had written to?

A. I can't state exactly as to the substance of the letter in every part, only he requested me to write to Mr. Haller to fix up the stove situated, I think, in the hall. He wanted it fixed, as the chimney or pipe did not draw. It passed through a transom, and he wanted it fixed so it would be all in shape when he returned. That's all I remember. I should say it was two or three weeks before he returned to New Orleans, but I can't say exactly.

The letter was addressed to Henry Haller. It was mailed and sent to him to New Orleans. He is in the hardware business.

Father NILLER recalled:

The facts seem to be that the name of Jakie Fabacher does not appear on the register of the school, and the sister that was his preceptress at that time is not engaged here; hasn't been for some years, but one of the sisters who was teaching school at that time is here now, and she says that to the best of her knowledge he went to school a week or two. He was there in reality only a short time.

781 The understanding was that he was to go back and continue going to school, but he never came back.

Contestants rest.

Testimony closed.

782 *Deposition of Mary Anna Shick, Offered on Behalf of the Contestants.*

I am sixty-five years old and reside in the town of Genoa, Douglas county, State of Nevada, and have resided here for fourteen years. I knew Joseph Fabacher. He was born July 4, 1825, in Buzenberg, Baiere, Germany.

I first became acquainted with him the 6th of May, 1850, and I knew him up to the year 1874 in New Orleans. Joseph Fabacher's wife's name was Mary Anna Fabacher. We were married the 13th day of May, 1850, in St. Mary's church. We lived together until the year 1863. There was born from our marriage five children, Mary, Franciska, Antoinette, Joseph, and Andrew. There is only one living now. That is Antoinette, now living in New Orleans. Mary died in 1852, Franciska died in 1852, Joseph died in 1855, and Andrew died in 1884, all in New Orleans. They left no children.

I cannot say where Joseph Fabacher was naturalized, but I know he voted in the year 1852, and I cannot say whether he registered or not. At this time he was working for wages and had no home of his own. We were living prior to 1863 in a coffee-house and hotel on Custom-house street.

Antoinette is now living at 924 Desire street, New Orleans. I don't know how much Joseph Fabacher was worth in the year 1874. In the year 1863, the year he sent me to Germany with two children, he was worth $60,000.00 in money and $1,500.00 worth of furniture. He deposited in 1863 in the Zabern bank $25,000.00 in his own name and drew it out in the year 1864 and built houses in Washington street and three frame houses on Cotton Press.

783 I was married to Joseph Fabacher at St. Mary's church, in the city of New Orleans, State of Louisiana, on the 13th day of May, 1850. I was divorced in January, 1874. I have since married Theodore Joseph Schich at Strassburg, Germany. Theodore Joseph Shick is living.

I know Magdalena Frey. She is my own sister. She came to America with Joseph Fabacher, my husband, in the year 1858. She worked a little over one year for me and my husband, Joseph Fabacher, in the hotel. He then took her away, because he had found out that I knew that they were intimate with each other. The first place I knew where he took her was to Mrs. Sandtrucker, on Sand street. Here her first boy, Joseph, was born. My husband continued to care for her and support her. My sister robbed me of my husband and my children of their father. Joseph Fabacher commenced to live with Magdalena Frey, my sister, in the year 1863. I cannot say where, as he sent me with the children to Germany. They were not married. Joseph Fabacher had six children by her up to the year 1874. How many since I do not know, as I left New Orleans in 1874. The names of the six are Joseph, Albert, Lawrence, Antone, Lewis, and Peter. They lived together until he died, I am informed.

Joseph Fabacher was seventy-two years old at the time of his death. Joseph Fabacher could read and write English. He was sober in his habits and a member of the Catholic church. When I knew him he was not hard of hearing; he had good hearing. He could speak and write the English language. He understood
784 it well. He attended night schools after he was married. Joseph Fabacher made and accumulated the money and property he possessed at the time I knew him in New Orleans and prior to the year 1863.

When we were living in the hotel my husband, Joseph Fabacher, would come home half of the time between the hours of two and three o'clock in the morning, when I would be ready to go to market. I would ask him where he had been all night. He would answer me, "By others." He meant by other women. Many is the time I came home from market and found the hired girl in his room. He went with other women so much that he contracted a disease and was laid up for four weeks in bed and was two months on crutches. Two months after we had a dispute about his going after other women and becoming diseased. He got so mad that he threw me downstairs, and I was laid up for two weeks. I had to get a woman to wait on me. One morning she was fixing a cup of coffee for me, and Fabacher told her she had better put in poison instead of sugar. After I recovered and came down in the kitchen I was in favor of sending the hired girl away that was doing the work in the kitchen, for I knew she was in the family way by Fabacher. Fabacher interferred and said to me, "If you put her out, I will put you in the stove and burn you up." A gentleman heard and saw him and called out, "If you put a hand on your wife I will shoot you, you brute." We never could keep a hired girl of good character. He would torment me until I had to let her go, and those I could keep he would do as he wanted to with them. After all the
785 trouble I had with him he told me many times "that he would swindle me out of everything and make me a beggar woman of me." He managed to swindle me out of everything.

When he deposited that money in the bank, in 1863, and took it out, in 1864, he gave our daughter, Antoinette, one dollar for a present and afterwards returned to New Orleans. In 1869, when he came back to Germany, he came to see the children and took a walk with them and requested me to clean his coat, which I did. An open letter dropped out of his pocket. I saw it was from Magdalena.

Cross-examination:

The last time I saw Joseph Fabacher, deceased, was in January, 1874. He asked me to take dinner with him and I refused. Since 1874 I do not know anything of my own personal knowledge about Joseph Fabacher. I saw a letter he wrote in 1896 inquiring about me. I know nothing of my own knowledge about the actions or life of Magdalena Frey, now Magdalena Fabacher, since the year 1874.

The contestant, Antoinette Thormann, is a daughter of mine. I never heard or knew that Joseph Fabacher had lost substantially all of the property he had accumulated prior to the holding of the Cotton centen-ial at the city of New Orleans in 1884.

786 *Deposition of William C. Keely, Offered on Behalf of the Contestant.*

My name is William C. Keeley. I am a clerk in the Leland hotel, of Chicago, and have been such clerk since the 20th of March, 1892. I reside in the city of Chicago and have known the late Joseph Fabacher; I knew him as a guest at the Leland.

In December, 1895, I was chief clerk for the Leland hotel. There is a book called the register kept at the Leland hotel and such a register was kept in 1895; it contains the arrivals of all the guests of the hotel and the time of arrival, with date; the guests as they arrive write their names in this register and also their residence.

I have here the register of the Leland hotel, of Chicago, of December 5th, 1895, and find the names of Joseph Fabacher, Mrs. Fabacher, and L. Fabacher; residence, New Orleans, La. They arrived at dinner Thursday, December 5th, 1895.

The name Joseph Fabacher appearing on the register of this date is in Mr. Joseph Fabacher's own handwriting. I know that to be a fact, because I was the one that roomed him; he registered and I assigned him to the room. The names Mrs. Fabacher and L. Fabacher are likewise in his handwriting. I saw him when he wrote in that register of that date.

COUNSEL FOR CONTESTANT: I offer in evidence the register of the Leland hotel of December 5th, 1895.

I was employed as chief clerk at the Leland hotel on the 10th day of May, 1896, and there was a register of the arrivals kept on that date in the registry book of the Leland hotel. In looking at
787 the register of that date I find the name of Joseph Fabacher and family, New Orleans, La., registered May 10th, lunch time. The name Joseph Fabacher and family, New Orleans, La., appearing on the register of the Leland hotel Sunday, May 10th, 1896, is in Mr. Fabacher's handwriting. I know that to be a fact, because I assigned him rooms and saw him write it. Mr. Fabacher never told me where his home was or where he resided.

COUNSEL FOR CONTESTANT: I offer in evidence the register of the Leland hotel of May 10, 1896.

Cross-examination:

To the best of my knowledge, the words New Orleans, La., that appears at the writ of the name Joseph Fabacher on our register of 1895 is in the handwriting of Joseph Fabacher. It has never been changed since it was written. I am positive it is his, and in my judgement it is the same writing. I know that he registered because I assigned him to rooms and sent him there. I suppose

that all of it was written by Mr. Fabacher, and I am sure that it is none of my own writing. It appears to be in his handwriting. I would swear to it, as far as registering, and state that he had done the other at the same time as he registered, and I would swear that it was Fabacher's handwriting. I don't undertake to remember the fact of every guest that registers. I don't know that I remember or can recall positively that he wrote the name of his wife and that of his daughter on the register at the time that he wrote his name. I remember Mr. Fabacher registering and the rooms he took, for I assigned them to him.

788 I knew him as a guest here for quite a while. (Showing witness register of 1896, and also the register of 1895.) In 1895. I don't know his destination; I don't know what way he was going; neither do I know where he was going in May, 1896. On the register of December 5th, 1895, there is no doubt about the signature. The registration is always by the guest and never by an office employee.

Q. You are not positive about that. Some other person might have written it without your knowing. Perhaps the night clerk wrote it. Is it possible?

A. It is hardly probable.

Q. I am asking if it is possible.

A. I am in charge of the books and no one else in the room, and would my cashier come to the front and write any such name as that?

Mr. Fabacher had a colored boy in May, 1895, and family of five. The colored boy looked after him and was his valet.

789 *Deposition of Pauline Gross (Nee Troye), Offered on Behalf of Contestant.*

My name is now Pauline Gross. My maiden name was Pauline Troye. My age is twenty-six years past. I will be twenty-seven next September. My residence is No. 635 Bakewell street, in the city of Covington, Kenton county, Kentucky. I knew the late Joseph Fabacher; he was my grandfather. I knew him from my earliest recollection until his death.

Joseph Fabacher resided when I knew him in New Orleans, Louisiana. So far as I can remember, he always resided in that city. My mother was born there in 1853, and he lived there then. He lived there from the time I became acquainted with him until he died. He died on Calhoun street, New Orleans, where he had lived about two years. Before moving to Calhoun street he lived for about ten years at No. 475 Prytania street, in that city, before which he lived at No. 117 Custom-house street, in that city.

I was married in November, 1894, and for four years next before I was married I lived with Joseph Fabacher, my grandfather, in New Orleans, La. I always heard my grandfather speak of New Orleans as his home and of Waukesha just as a summering place. He built a house in Waukesha, which he told me he built simply

because it was so much more convenient for him when he was sick than it would be for him at a hotel.

Joseph Fabacher was seventy-three years old when he died. He was born at Buzenberg, Germany. He spoke both German and English languages. He was subject to a physical infirmity—that is, he could not hear as well in the latter part of his life as
790 he could when younger. At times he was quite hard of hearing.

He was proprietor of a restaurant and hotel when engaged in business, since I first knew him, in New Orleans, La. For some eight or ten years before his death he was out of business; he retired. His place of business was at the corner of Royal and Custom-house streets for several years. I cannot state just how long, possibly fifteen years or more.

He was a constant drinker, and sometimes he would get under the influence of liquor. I am able to state that I have seen him on several occasions under the influence of liquor during the past three years. I remember several times he was, while at Waukesha, under such influence, but just how often I cannot state during that time. I remember two occasions within three years last past upon which I saw him under the influence of liquor in New Orleans; one Christmas eve in particular I recall.

I lived with Joseph Fabacher for four years prior to my marriage in November, 1891. I was cashier at the restaurant for the nine years next before I was married, during the last four years of which nine I lived with him. During the other five years I saw him almost every day. Sometimes he would go away from home, sometimes to Europe, for his health, but when at New Orleans I would see him every day.

While I lived with him the inmates of his house were his *his* wife, five children, and myself. One of these children married while I lived with him. He had one house servant, cook, and house girl, and a boy about the yard and stable, to look after the horses. I am not able to state the names of the servants.
791 They were changed so often that I could not attempt to state what servants was working for him at any time. I was away from the residence, attending to my duties in the restaurant every day, and did not see much of the servants or become much acquainted with them. The last one I remember was a colored woman named Anna; I think, "Anna Davis;" but as to the last name I will not be positive. I saw more of her than of any of the other servants.

I visited Joseph Fabacher at Waukesha, Wis. He generally left New Orleans for Waukesha in the summer because it was too warm down home in New Orleans for him. The last time he went to Waukesha was in May, I think, 1896. He left Waukesha in 1896, in November. In 1895 he left there in December. In other years he left Waukesha and went back home to New Orleans in October. He was in New Orleans until he went to Waukesha and then again after he returned from Waukesha. He always called New Orleans his home. He never spoke of any other place as his home. Last

October I was with him at Waukesha, and the only one who was with him that day. His wife and daughter and servant had gone to Milwaukee, where they always did their shopping, and while they were there he said to me, "I will tell mamma to get ready to go home next month." On another occasion he said, "When I go home I am going to take the children some dolls." His chief establishment was at New Orleans.

The residence at New Orleans was much better furnished than the one in Waukesha. The home in New Orleans is a new house and is furnished in the handsomest and most expensive manner throughout. It has been built and furnished since my mar-
792 riage. The house at Waukesha had in it very ordinary furniture and of the cheapest kind. I should think that the furniture in the house in New Orleans is worth at least a half a dozen times as much as that in the house at Waukesha. I understand that the cost of the home in New Orleans was $17,000.00. I should think that the Waukesha house is not worth much, if any, more than one-half of the home in New Orleans. There are eight rooms, exclusive of bath-room, in the house at Waukesha, and two halls, upper and lower. There are, I think, exclusive of servants' rooms, nine main rooms, bath-room, a hall through the house, and large reception-hall room in the house at New Orleans. He had the family pictures at New Orleans. He had a group of the family, and also separate pictures of some of his sons. These were all framed and hung up in the home at New Orleans. He had nothing of this kind at Waukesha.

The friends of Joseph Fabacher resided in New Orleans. Those who knew him the best—the longest and the most intimately—lived in New Orleans. All the members of his family, except one son, lived in New Orleans; this son lived at Trilby, La. He had eleven children living in New Orleans; one child, a son, died there. All his children lived in Louisiana. He had one brother in Europe; now at Havre, France, I believe. He had a sister who lived and died in New Orleans. His widow is living in New Orleans. Four of his children were unmarried and resided with him in New Orleans up to the time of his death. Two of them are now with their mother in the home in New Orleans; one of them resides there, but is attending college, and another one makes his home there, but is traveling a great deal. Seven of his children are married
793 and are living in New Orleans. Of these five are boys and two are girls. The son, Joseph, at Trilby, is married. My mother, now Mrs. Thorman, is named Antoniette, and lives at 924 Desire street. Joseph Fabacher had no brother or sister in the United States, so far as I know, living at his death.

Joseph Fabacher belonged to the Roman Catholic church and worshipped at the church known as "The Holy Name of Jesus," on St. Charles Ave., near his home. He rented a pew in that church, and I think by the year. I know he rented a pew in the church of "Our Lady of Good Counsel," on Louisiana Ave., by the year when he lived on Prytania street, of which congregation he was a member during all the time he lived on Prytania street; perhaps as much

as ten years. He was a member of the congregation of the church of "The Holy Name of Jesus" from the time he moved on to Calhoun street up to the date of his death. I was a member with him of the congregation of "Our Lady of Good Counsel."

His wife and all his children belonged to the Roman Catholic church; his widow, Lawrence and Peter, and the younger children, John, Aloysius, Lena, and Jacob, belong to what is known as the Jesuit church. The widow and children, John, Aloysius, Lena, and Jacob, are members of that congregation meeting at the church named "The Holy Name of Jesus." Lawrence and Peter belong to the congregation meeting at the church called "The Immaculate Conception;" Anthony, to "The Sacred Heart;" Barbara (Mrs. Broderick), to "Our Lady of Good Counsel;" Louis, I think, to the "Cathedral" or "St. Mary's church;" my mother (Mrs.
794 Thorman), to "St. Vincent de Paul." I do not know the church membership of Joseph or Albert—that is, the particular congregation.

The minor children of Joseph Fabacher went to the Roman Catholic school. Lena and Jacob are now under twenty-one years of age. I think Aloysius is also, but he may now be of age. At the time my grandfather died — was at Spring Hill college, and is still there. Last year Lena attended Soula college, in New Orleans. Aloysius was at one time at Spring Hill college, in Mobile, Ala., but was not attending school when grandfather died. I was present when Lena took her first communion, which was in the church of "Our Lady of Good Counsel." Joseph Fabacher was not, as I recollect, present. I have no personal knowledge as to the first communion of the other children. Jacob took his first communion in April, 1896, at the "Immaculate Conception church," but I was ill at the time and not present. I don't know whether grandfather was then present or not.

Joseph Fabacher had a family tomb at St. Joseph's cemetery, on Washington avenue, New Orleans, La. He was buried at that place and in this family tomb. One grandchild of his, a child of his son Joseph, is also buried there. No other members of the family have died since he had this tomb built, which was in the year 1889.

When Joseph Fabacher built this tomb, he said to me at my desk at the restaurant, "This will be my last home. I want a nice home. I want to be buried in this tomb." I asked him why he had
795 built it so large. He said it would hold eight persons. He asked me, "Do you not think I want all my family to be with me?" I have heard him frequently say he wanted to be buried in this tomb. I have heard him say at Waukesha, while he was sick and while I was with him, that he did not want to die at Waukesha.

Dr. Loeber was the family physician of Joseph Fabacher for a number of years. My grandfather had him by the year. He told me that for a long time he paid him $100.00 per year, but that later, when the family at home had become smaller, he paid him only $75.00. Dr. Loeber lived in New Orleans, at the corner of Enterpe and Coliseum streets. I know that Dr. Loeber attended Joseph

Fabacher during his last illness and that he performed an operation upon my grandfather, but I was not present when my grandfather died. So far as I know, Joseph Fabacher had no physician other than Dr. Loeber, but I think some one assisted him in performing this operation, which was performed at the Touro infirmary, in New Orleans, on Prytania street, just opposite my grandfather's old home. Joseph Fabacher was in poor health a great portion of the time during the last five years of his life.

I can say nothing further except to say that New Orleans was the home of Joseph Fabacher up to and at the time of his death; that he lived there and that he died there; that he always spoke of New Orleans as his home; that he said he did not want to die at Waukesha; that he built a tomb in New Orleans, in which he said he wished to be buried, and which he called his last home.

796 Cross-examination:

Antoinette Thormann, the contestant, is my mother. Joseph Fabacher built a house at Waukesha, Wisconsin, before he sold out anything in New Orleans, and he occupied the house at Waukesha before he sold anything in New Orleans. He took his wife and two of his children the first year he went to Waukesha. These children were Lena and Jacob. He simply went to Waukesha for his health. The next year when he went up to Waukesha he took the same persons with him. Each time he took them all back with him to New Orleans. I think the sale of the property on Prytania street in New Orleans took place in the spring of 1895. At any rate, it was after my marriage, which was in November, 1894. I know that Joseph Fabacher did not build the house at Waukesha with the intention of making Waukesha his domicile or with that purpose. As I have already stated, he built that house simply as a convenience. In fact his wife said she would not go up there with him unless he built a house, as she could not stand the inconveniences of a hotel. I know that Waukesha was not his home or his domicile. That place was but a temporary stopping place to which to go for his health when it became too hot for him in New Orleans. For some years, some three or four, to my recollection, he went to Europe for his health, but when he became older he thought he would try Waukesha i-stead of taking the trip to Europe, and he did so. It was the mineral waters which did him good. I know that since Joseph Fabacher built the house at Waukesha he has always claimed New Orleans as his home; has always called New Orleans home, and as late as September, 1896, at Waukesha,
797 he said he did not want to die at that place, and spoke about going back home in the middle of the next month, and he did in fact go back home in November. I should have said as late as October, 1896, which was the time he spoke to me about going back home during the next month, November. I went up to Waukesha in September and mentioned that month by a slip of the tongue instead of October, which was the month in which he made the statement to me which I have given. Mrs. Fabacher and her

children were in New Orleans when Joseph Fabacher died and have lived there all the time since. They returned home to New Orleans with him in November, 1896, and he did not die until March, 1897. He died at his home and was buried in the city of his residence, and in the tomb there built by him in which to be buried and which he called his last home. When I speak of his dying at his home I mean in New Orleans. He died at the infirmary in that city, as I have already stated. I know nothing whatever about any distribution by Joseph Fabacher of any property of any kind among any of his children. He sold the restaurant business several years ago, and Lawrence was to take into that business with him some of his brothers. This was afterwards done, and the business thereafter was carried on by Lawrence & Bros. The building in which the business was carried on was not sold until 1895, when it was sold to Lawrence Fabacher & Bros., and the residence # 475 Prytania street was sold to Joseph Fabacher's son-in-law, Theodore Broderick, as was also the home and business place now occupied by Theodore Broderick on St. Charles avenue.

798 *Deposition of Rev. Joseph Francis Lambert, Offered on Behalf of Contestant.*

I reside at 3222 Chestnut street, corner Louisiana avenue, in the city of New Orleans. I was born and raised here; lived here all my life, except when I was at college.

I knew the late Joseph Fabacher for a couple of years prior to his death. I knew all of the members of his family.

I am rector of the church of Our Lady of Good Counsel. Mrs. Broderick, a daughter of the deceased, attended my church, but I have not seen her for some time, however.

When Joseph Fabacher resided at the corner of Alein and Prytania streets Mrs. Broderick, Lena's father, Jacob, and Alois attended my church. I know Miss Pauline Troye, the grand-daughter of the deceased. She married Mr. Samuel Gross. They were married at the home of Joseph Fabacher by me.

Miss Lena and the boy Jakie were attending my school, and afterwards they left to go to the Convent Dominican on the avenue, and the little boy went to free school, I think, for a while, and also to the Jesuits, but I am not sure.

I think it was three or four years ago that I performed the marriage ceremony of Miss Troye, the grand-daughter of Joseph Fabacher, and Mr. Gross.

The children, Lena and Jacob, attended the parochial school of our church about four or five years ago. I think it must be four or five years ago since Lena made her first communion at our church. I am not quite sure about it.

Mr. Fabacher at the time of his death was a man about seventy years of age. All the members of his family that I know of resided with him at the house corner of Alein and Prytania streets.

Mr. Fabacher had a pew in my church at one time, but not within the last two years. The pews are rented by the year. Since Mr.

Fabacher and his family left to reside in Calhoun street they have not attended my church. I attended him in his last illness
799 at the Touro infirmary and administered to him the sacrament of the church. He was sick there about a week or ten days. When I went to see him at the Touro infirmary his son Lawrence and his wife were there. For the last two or three years he was not a member of my congregation. In fact he left his Prytania and Aline Streets home and moved into another parish. I heard his confession before his death and administered to him the last sacrament prior to his death. He was to undergo an operation and did not know whether he would get over it or not.

Cross-examination:

I think it must be possibly four years ago since the marriage of Miss Pauline Troye and Mr. Samuel Gross. The young children lived with Mr. Fabacher, those who attended school, and a great many of them are of full age. Some of them are married and have established their own homes in the city and have been independent for many years.

They say that the Touro infirmary is a first class institution of high reputation as a medical resort. It has that reputation, and is public in its character, so far as I know. It is attended by many of the highest and best physicians of this city. It is located near where Mr. Fabacher lived. It is opposite his former residence.

It was about two years ago that he gave up or discontinued his subscription to the pew in the church. He gave it up for the reason that he moved out of the parish and had no further use for the pew. It is perfectly natural for them to attend the church in their own parish, as under the rule they were bound to attach themselves to that church according to the spirit of the church. His family were all church-going people and performed all their duties appertaining to the rites of the church, so far as I know.

Redirect examination:

After Mr. Fabacher left my parish he went to the parish of the Holy Name, commonly called "Little Jesuits," on St. Charles avenue, opposite Audobon park.

800 The funeral of Mr. Fabacher was held from his residence on Calhoun street, starting from there, and came to the Jesuits' church.

Recross-examination:

The Jesuits' church, from which he was buried, is downtown; about how far distant from the Little Jesuits' church I cannot say. It is in a different part of the city.

Deposition of Mathias Troye, Offered on Behalf of the Contestant.

I reside at 924 Desire street, in the city of New Orleans. I knew the late Joseph Fabacher. He was my grandfather. He was not in full possession of all of his faculties or in hearing very well.

He spoke in a very loud tone of voice. During my boyhood he lived at the corner of Prytania and Aline streets for a number of years, and then he move- to Calhoun street after he came back from Waukesha. I was present at his funeral, which first assembled at his home on Calhoun street. From the marriage of my grandfather to his first wife there was born my mother and a son, who is now dead. He died about ten years ago. By the last wife there was eleven children—Joe, Lawrence, Albert, Peter, Tony, Louis, Alois, John, Barbara, Lena, and Jakie.

He had five grandchildren—that is, from my father. Joseph Fabacher, at the time of his death, was 72 or 73 years of age. I am not positive exactly when he first went to Waukesha, but I think it was in 1892 or 1893. It was during the exposition at Chicago in 1893. He usually remained there just during the summer months—five months and sometimes six—not longer than six months.

Waukesha is a nice summer resort; has a number of mineral springs. I visited my grandfather there very often every summer. I used to work in Chicago. He went to Waukesha some time in May or June, 1895. He generally went away in May or June and he came back in the fall of 1895, in the month of October. He then remained in New Orleans from October, 1895, to May, 1896, and then went away to his summer home.

801 In 1896 he went to Waukesha in May and returned to New Orleans the latter part of November, 1896. Up to the time *is* his death he lived at his home on Calhoun street with his wife and his children. His son Jakie was not there this time, because they sent him down to Spring Hill college, Alabama, all the way from Waukesha, to go to school all alone, and Lena lived with them also and so did Alois; but he was here one day and out another.

During the school session of 1895-'96 Jacob attended the Jesuits' school, where he made his first communion—that was the Big Jesuits, on Barone near Common street—and during the fall of 1896 he went to Spring Hill college, and he had been there since until they sent him word that his father was sick. During the school session of 1895-'96, I cannot exactly state, but I think that Lena attended the college on St. Charles avenue, the St. Dominican convent.

Lena, Jakie, and the servants went with him to Waukesha. They would bring the servants from here and then bring them back again. I heard my grandfather very frequently *say*, when I came back from Chicago, referring to New Orleans as his home. When I came back from Chicago I met him on Royal street, and I saw him at the restaurant and said, "Hello, grandpa," and he said, "When did you come back home?" I said I came back a few days ago; that I was travelling on the road, and he said that I was too young to be on the road and that I ought to stay home. I then asked him when he got back, and he said he had been home a couple of months; that the weather in Waukesha had become very cold, and he said he was feeling very sick; showed me a belt he had around his waist. He said he had to keep that on all the time. He said the doctor told him he would not live until he got home. He used

a cane. He always used a cane. While I was in Chicago I met Alois Fabacher and he told me that grandpa had fallen out of the hammock, so I went up and see- him, and when I got there he was in bed.

802 He used to drink plenty — brandy, whiskey, and cognac. He would take a great many drinks during the day. I drank with him quite often myself. I attended his funeral myself. He was buried in his tomb at St. Joseph's cemetery, on Washington street. The inscription, "Family of Joseph Fabacher," is on that tomb. When my grandfather passed through Chicago he stopped at the Leland house, on Michigan avenue. His home here in the city of New Orleans was much nicer than his house in Waukesha. The one in Waukesha was fixed for summer, with screens to keep out musquitoes and bugs. He had a crescent in fromt of the house and that was the way I was told I could find the house when I went up there. All his family portraits and photograpgs were kept here at his home on Calhoun street.

Cross-examination:

My full name is Mathias Troye. My mother's name is Antoinette Thorman. Her first husband, my father, was named Troye. My mother is the contestant in this matter. She filed objections to the will of Joseph Fabacher. I am a clerk in the gent's furnishing business. I am not working at present, but I have plenty of letters to go back to work. I live with my mother, 924 Desire street. I had no charge of looking up the evidence in this matter. I have been looking up witnesses and reporting them to Mr. McCaleb, and taking a great deal of interest in the case.

During the years of 1895 and 1896 I lived in New Orleans for a portion of the time; in 1895 I *leave* here in August. I came back home from Chicago, and at that time Mr. Fabacher was in Waukesha and had been there for a few months. He left here in May or June; I don't know exactly. I know that he went to Waukesha in 1895; some time in May or June; I don't know exactly. I know that he went to Waukesha in 1895. During that time I did not see him; he was in Waukesha and I was here part of the time and also in Chicago.

He only had one horse in New Orleans. I could not tell you that he sold some of the horses. The horse I spoke of was the only one he kept here. When I was at Waukesha I asked for the

803 family portraits, as to where all the pictures of the family were, and I was told they were home in New Orleans. I did not ask for them with a view to preparing for this case. I asked for them just the same as I would ask grandpa for other things. I did not ask him for all the heirlooms of the family and I did not closely look for these pictures. I only asked for them when I was there about a day. I asked particularly about one picture, and that was home here, and I did not see any other pictures there. I doubt it very much if there were any other pictures there.

I do not know that these family portraits were the*ir* in that house.

I was in the parlor and did not see them; spoke to him about it and looked in the room where the children slept, and if they were there on the wall I would surely have seen them. I did not look about for these old pictures, but if they had been hanging on the wall I would have seen them. I surely would not go into the cellar for them. My grandpa was very proud of his house and would take me around and show me everything in the house. I don't know that it was an expensive house; it was like all summer-houses. I think it was his own property. I could not say that this property on Calhoun street belonged to him or not. When I said that he lived in his home on Calhoun street I simply stated that he was living there; I did not mean that he owned the property.

At one time he owned considerable property in New Orleans, but he sold all of it. He could have gotten better prices. He sold this property while he was going to Waukesha.

After he had been going to Waukesha for a few seasons he disposed of his properties and continued to go to Waukesha in the summer time for his health, he said, because the waters did him so much good. I think he came back from Waukesha in October, 1895. I am not positive, but it was in the beginning of the winter here. I don't know when he came back in 1896; I was not here. I could not say that Mr. Fabacher was a naturalized citizen of this country, but I think he voted here in 1895, 1896, and 1897.

804 I don't know; I was told that he voted in Waukesha. He did not tell me himself and neither did I ask him. Before he moved to Waukesha he had a buggy and a barouche. I think he sold the barouche many years ago. He used to go too and from the restaurant in his buggy. That is all the horses and carriages that I know he possessed when he went to Waukesha, and moved them there. When Mr. Fabacher sold the house on Prytania street I don't think that he took the furniture to Waukesha. He gave it away to his children.

I have been to his home before he went to keep house at Waukesha. I used to see his furniture quite often, but I don't think I would be able to recognize any. It was not the same furniture that I saw at Waukesha; the furniture at Waukesha was new. I am sure of that; entirely new.

Redirect examination:

Mr. Fabacher told me that Lawrence wanted him to stay at Waukesha, but that Lawrence had his way long enough and he was going to have his way; that Lawrence wanted him to stay all the time and didn't want him to come home. He said he wanted to buy mamma a house and that Lawrence had his money and that he had to go to Lawrence down there and get some money.

Deposition of Samuel H. Gross, Offered on Behalf of the Contestant.

I knew the late Joseph Fabacher for about five years, possibly a little longer. I married a granddaughter of the deceased. I was married in his house on Prytania street, and prior to my wife's

marriage she lived with Mr. Fabacher at his house. The deceased, Joseph Fabacher, had 11 children living, one by the first wife and 10 by the last. At the time of the death of Joseph Fabacher there was three of his children living with him, Lena, Jakie, and Alois. I never visited the deceased at Waukesha, but was in his house on Calhoun street on three different occasions; once on a visit, once on an errand, and another time when he was dead in the house.

The members of his family when he resided on Calhoun street was, I think, Jakie, Lena, and Johnnie; whether Alois stayed there or not, I could not say. I know that he had a bank account
805 in the New Orleans national bank in this city. I use to write his checks for him. His eyesight was poor; he read with glasses, and his hearing was very bad; in order to make him understand it was necessary to talk very loud. When he returned in the fall of 1896 I heard him complain for some time. He said that the reason he went to Waukesha was for his health in the summer time; he called New Orleans his home; whenever he spoke of his home he never spoke of any other place else as his home but New Orleans, where all of his children and grandchildren resided; there was only one of his children that resided outside of the city of New Orleans; that was his son Joseph. Where the younger children went to school I don't know exactly. I know that Lena went to Soule; beyond that I don't know; and as to where Jakie went to school in 1895 and 1896, I could not answer that; if he went to school at all it was here; never went outside of New Orleans.

Joseph Fabacher had a bank box at the New Orleans national bank in 1894, during which year he took it out. I could not tell you where he kept his valuable papers. I know that he received a package by express in the early part of December; the old gentleman sent me to get it and gave me the money to pay for it. I went to the American Express office on St. Charles street and they refused to give it to me; they said he must come himself and be identified. I remember the charges were $2.00.

His home on Calhoun street was furnished very elaborately. When he was here he was accustomed to visit Fabacher's brothers' restaurant. He liked to drink three or four toddies and then he would take a nap. He talked in a very loud tone of voice.

Before the old gentleman went to the Touro infirmary, Peter received a package in my presence, and he was anxious to have the same locked in the safe, and would not go away until he see it locked in the safe, and then he put the key in his pocket; it was a package belonging to the old man. When the old man was about to leave the restaurant in the evening he would say that he was going home.

806 Mr. Fabacher would travel to and from his Calhoun Street residence to the Fabacher restaurant in the cars. I don't know that he travelled that way all the time, but I saw him quite often in the cars.

Cross-examination:

I am married to a daughter of this contestant and sister to the witness that preceded me, and the testimony I am giving here today is voluntary on my part for the purpose of giving all the information that I can to help my mother-in-law. I am taking some interest on her side of this contest to aid and assist her where I can. I did not visit Mr. Fabacher at his home in Waukesha. I do not know, in speaking of his home, whether he referred to New Orleans or not, but when he spoke about going home he was staying in New Orleans. It would be unnatural for him to say that he was going home in New Orleans while in my presence if he was going to Waukesha. I was never in the house on Calhoun street but twice and during the funeral. I was married to his granddaughter on the 14th of November, 1894, and then his family was living on Prytania street, in this city. I know that Mr. Fabacher owned his home on Prytania street. I do not know whether he owned a place on Calhoun street. I know that he owned considerable real estate here in the city, but that he sold it; that was since he commenced to go to Waukesha. He commenced to visit Waukesha about five years ago; that was before the World's fair. Before he sold his property he spent two seasons in Waukesha, and then he came back here and sold his property and then went back to Waukesha. He went there to spend every summer. It is a common thing for people from the North to come here and spend the winter because of the difference of climate, and it is a common thing for people from here to go North to spend the summer. This package that I spoke of coming for Mr. Fabacher from the American Express Company, I know nothing about its contents. It seems to me that it *saw* something valuable. I do not know that it contained coupons taken from his bonds, and neither do I know that they were collectible here. I don't know much about that.

807 I don't know that I have any knowledge that he took to Waukesha his furniture, horses, or carriages. It seems to me that I heard his house was supplied with new furniture; I didn't know that. I know *what* he had a freight car hired for the purpose of carrying away to Waukesha his horses, furniture, and carriages.

Mr. Fabacher was not in business for himself for some time prior to his death. When I first became acquainted with him, about five years ago, so far as my personal knowledge goes, he was out of business.

Redirect examination:

I do not know anything about the size of Joseph Fabacher's fortune; it was invested principally in New Orleans city bonds.

Q. How many men of his age have you known, over seventy years of age, to change their domicile from a place where they resided over fifty years, where all their family and friends reside, and go to another State and among strangers?

Objected to. Objection sustained. Exception taken.

I have heard it mentioned that Joseph Fabacher was worth $200,000. The property formerly owned by Joseph Fabacher and known as the Fabacher restaurant is owned by Fabacher Brothers. I think Mr. Lawrence Fabacher owns the real estate. His Prytania Street home was sold to his son-in-law, Mr. Broderick. When he sold out here most of his property was bought by some members of the family.

Cross-examination:

I know Mr. Broderick, the son-in-law of Mr. Fabacher. I don't know that he does a large business. I think the property on Calhoun street was probably sold out in 1894.

I never saw or heard that any of the property of Mr. Fabacher had been advertised for sale by auction.

808 *Deposition of Antoinette Thormann (the Contestant), Offered on Her Own Behalf.*

I am forty-four years of age, and was born in New Orleans. My father was Joseph Fabacher and my mother was Maria Anna Frey. They were married in 1850.

Counsel for contestant here offered in evidence the marriage certificate of Joseph Fabacher and Maria Anna Frey, which took place on the 13th day of May, 1850, according to the rites of the Holy Catholic church, which said certificate is signed by Joseph Fabacher and Maria Anna Frey and by P. Petesch, priest, and Jacob Yost and Xavier Burdig, witnesses.

I had one brother, who died about ten years ago. His name was Andreas; he did not leave any children. I was first married to Matthias Troye in 1870. My father and my mother were not living together at that time; they separated in 1863. After they separated my father lived with Magdalena Frey, the full sister of my mother. I cannot say when she came from Germany here; I know she was a servant for my mother. After my father and mother separated my mother went to Germany; as to how long she staid there I cannot tell. She is still living and residing in Genoa, Nevada.

My father had eleven children by Magdalena Frey. They were named Joseph, Lawrence, Tonie, Louis, Peter, Barbara, Johnie, Alois, Albert, Lena, and Jakey.

I remember when my father and mother were divorced, in 1874. My mother was married about a year afterward. My first husband died in 1890. I had five children by him; they are still living.

809 Their names are Pauline, Matthias, Joseph, Josephine, and Mary. Only one of them *are* married; that is Mrs. Samuel Gross. She was married at her grandfather's house; she lived with him about three years before her marriage. I know that my father lived here all the time because it was his home. He was buried in St. Joseph's cemetery No. 2, in his own tomb, which has on it the inscription, "Family tomb of Joseph Fabacher."

The condition of his health was bad the last time he came from Waukesha. His children Lena and Jacob were sent to school here in New Orleans. All the children I have named lived here in New Orleans except Joseph, who lives in the parish of Acadia. I was once in the house of Joseph Fabacher on Calhoun street; that was the time of his funeral. He was taken to the Touro infirmary about seven days before his death; he was attended there by Dr. Loeber. While my father was at the Touro infirmary I used to go and visit him every day.

In 1863 my father made my mother leave for Germany. My brother and I went with her. We staid for six years at Straussburg. I think that in 1890 he gave up business; before that time he was in the restaurant business and grocery. I do not know who got the plantation at St. Landry. Lawrence Fabacher and brothers have the restaurant. My father was carrying on that restaurant in 1884. My father was a drinker; he was accustomed to drink the best of liquors; he drank often.

The name of my mother's last husband is Joseph T. Shick.

810 *Deposition of Josephine Troye, Offered on Behalf of the Contestant.*

My name is Josephine Troye. The late Joseph Fabacher was my grandfather. Before his death he lived on Calhoun street. I have visited at his house on Calhoun street. He used to leave here generally in May or June. Lena, Jakey, and their mother lived with him on Calhoun street.

Lena made her first communion at Father Lambert's church about five years ago. She went to school at the Magnolia school, a public school, Father Lambert's school, St. Domin-can convent, and Soule. In 1895 and 1896 she went to the St. Domin-can convent, and the last year she went to Soule. Jakey made his first communion at the Jesuits' church on Baronne street. In 1895 and 1896 he went to the Jesuits' and to Springhill college. It was just lately that he went to Springhill college, and just before that he went to the Jesuit's.

I did not go often to grandfather's residence. I was working at Fabacher's restaurant. I was discharged on May 5th.

Q. Why were you discharged?

Objected to by proponent.

By the COURT: I guess that is not important.

Exception taken.

I was discharged by Mr. Lawrence Fabacher. I had been working at the restaurant for four years in May. I cannot say that my my grandfather drank exactly. His sight and hearing was very bad. We had to holler at him and talk to him in a very loud tone of voice I have heard him say where his home was. He used to say, when it got warm down here, that he was going to
811 Waukesha, and when it got cool he had to come back here. He said he could not stand the cold up there and had to

come to New Orleans. Then when he was at the restaurant he would say that he was going home. Whenever he left the restaurant he would speak about going home. The house on Calhoun street was well furnished. I think there were eight rooms in it.

Cross-examination:

Miss Lena is eighteen years of age in February. All the schools I have mentioned are Catholic institutions except Soule and the Magnolia school. She attended the Magnolia school several years ago, and later she attended these private colleges.

The Springhill college is a Catholic institution of higher education. It is of a private character.

Lawrence told me that it was through him that my mother got that house and lot. My grandfather did not give it to her. He gave it to us children. We have had it for about five years—that is, we are living there three years. He was selling his property that he owned here about that time. My grandfather owned several houses and lots here. I don't remember that he sold them at public auction. I never visited at Waukesha. His home was on Calhoun street. When he was downtown he would always say that he was going home. He would speak to the cashier in the ladies' department and say that he was going home. The last time that I remember him saying anything about that was about a month before his death. I remember him saying, jokeingly, "I can't make any money here; I guess I will go home." That is the substance of what he said when he was going home.

812 *Deposition of John Keppler, Offered on Behalf of Contestant.*

I reside at 919 Desire street, near Burgundy street, New Orleans; have lived there all my life. I knew the late Joseph Fabacher since 1891. I have been shaving him since 1891 or 1892. When I knew him he always claimed this to be his home. I heard him say that personally. I last saw him within a year ago. I suppose about seven or eight months ago. The last time I spoke to him was on Canal street; that time he was looking for an eye doctor.

Cross-examination:

I might have shaved him later than 1894. I cannot say that I shaved him during June and July, 1894. He would stay here until the weather got warmer and would spend the summer in Waukesha. I shaved him during 1891, 1892, 1893, and 1894. I had a conversation with him subsequent to 1894. I told you I saw him on Canal street and he was glad to meet me, and asked me how I was.

Deposition of LEE SCOTT, on behalf of contestant, — testified as follows:

I reside in the city of New Orleans and knew the late Joseph Fabacher. I met him in August, 1895, at Waukesha, in the company of Mr. Matthias Troye. I met him on the street near the

Fountain house. Mr. Troy and I had a conversation with him, and Troye asked him in my presence when he was going to leave for home, and he said when the weather got cold. This conversation took place in August, 1895. Since that time I met him
813 several times in New Orleans, but never had any conversation with him, but in February I was in company with Mr. Troye, and we were going into the restaurant and met Mr. Fabacher, and Mr. Troye, addressing him, said, "Hello, Grandpa; when did you get back home?" and he replied, "I came back a few months ago;" and he wanted to know from Mr. Troye what he was doing. Mr. Troye told him *told him* that he was traveling for a Chicago firm; that he represented a clothing-house, and the old gentleman said that Mr. Troye was too young to travel; that he had lots of time yet and should remain at home. Mr. Troye asked how he was feeling, and he replied, "I don't feel well," and I said, "You don't look like a sick man," and he replied, "Look what I have to wear," at the same time pointing to a bandage which he had around his waist. I then left him standing there and went away. I think it was in the early part of February, this year, that Mr. Troy asked him if he was going to Waukesha, and he stated no; that he would stay at home this summer, in New Orleans; that he was feeling too bad. It was in February, 1897, this conversation took place. Mr. Troye had just returned from Chicago, and I don't know the correct date.

Cross-examination:

The only hotel that I know at Waukesha is the Fountain house. We went to Waukesha on the boat; it was my first visit there. I went in company with several friends. It was late in the evening when I got there. We went back to Milwaukee and took the boat that night. I saw Mr. Fabacher near the Fountain house. He was walking. I cannot remember what road we took from Milwaukee to Waukesha. I am not mistaken about meeting the old
814 man near the Fountain house. I was told that it was the Fountain house. I do not remember whether or not it is a stone or brick house. It was late in the evening and I cannot tell that there was large trees and a fountain in front of it. I cannot remember whether or not there was a fountain in front of it or behind it. I met the old man about half a square from the hotel. I cannot say whether there were any stores where I met him. It looked like residences to me. I know there are no buildings right in front of the Fountain house, but I am sure I went there and spoke to Mr. Pokorney, whom I worked for; he was then staying there with his wife and daughter. I don't know why, but I remember that conversation.

No one came to see me about testifying in this contest; only I received a subpœnae, and when I met Mr. Troye I asked him about it and we refreshed our minds about it. I was subpœnaed before anything was said about it to Mr. Troye. I read the subpœna to him and then spoke to him about it. Before the subpœna was

served upon me I never mentioned it to a soul. After the subpœna was served I saw Mr. Troye, and he asked me if I remembered when we were together going into the restaurant at Fabacher's and when we spoke to him about Waukesha. He asked me if I remembered that conversation at Waukesha. I said I did. I am not testifying from suggestions made to me; they are facts. There are lots of other facts, but I remember this well.

This conversation that took place at Fabacher's restaurant was in the month of February; it was about the first or second week in February. I know Antoinette Thormann and Mr. Troye
815 personally. The young lady I used to meet here at the restaurant. I used to go in the ladies' department about two or three times a week. I have visited at the house of Mr. Troye, but not recently. I was there once on New Year's day and not since.

Deposition of William Palfrey, Offered on Behalf of Contestant.

I reside in New Orleans; have lived there for sixty-two years. I knew the late Joseph Fabacher for several years, certainly four or five. I would see him very frequently; he would come into the bank. I am cashier of the New Orleans national bank. Mr. Joseph Fabacher had an account in our bank (witness producing a copy of the account). This is an account from May 6th, 1896, to February 27th, 1897 (witness reading from account). It runs from May 6th, 1896, to March 1st, 1897. That account is correct; it is taken from our books. Joseph Fa-cher had a bank book in our bank; it was withdrawn and delivered to him in person November 1st, 1894.

Account of Joseph Fabacher with the New Orleans national bank from May 6th, 1896, to March 1st, 1897, offered and received in evidence.

The following is a copy of the same:

816 Joseph Fabacher in account with the New Orleans national bank.

DR.

1896.				1896.		
May 6.	To c'k	4,100		May 5.	By dpt.	12,438.26
"		59.25		Nov 27.	dpt.	1,100
"		300				
			4,459.25			
7.		6,150				
"		60.80				
"		75				
			6,285.80			
8.		228				
"		1,000				
"		88.25				
"		95				
			1,411.25			
9.			133.90			
June 12.			150			
	Balance		1,098.06			
			13,538.26			13,538.26
1896.				1896.		
Nov. 30.	To c'k		130.75	Nov. 27	Balance	1,098.06
Dec. 4.		14.95		'97.		
"		100		Jan. 7	Dpt.	1,000
			114.95	'97.		
9.			100	M'ch 1.	Dpt.	11.54
14.			100			
23.			12.50			
24.			100			
'97.						
Jan. 5.			50			
7.		100				
"		21.70				
			121.70			
16.			793.50			
19.			82.80			
20.			50			
Feb. 2.			14			
3.			19.30			
4.			50			
10.			50			
12.			5.10			
27.			3.15			
			2,109.60			2,109.60

817 Cross-examination:

It is customary for the people of the North to winter down here in New Orleans. Sometimes people open accounts in our bank. Sometimes they bring exchange, they deposit it, and we give them credit, and they can use it as they call for it by check. This does not seem to be a very extended account. The last check is for overdrawing his account eleven dollars and fifty-four cents. His account indicates about five extensions. The account does not indicate any transactions during the month- of June, July, August, and September, except one dated June 12th, 1896. That is right.

Redirect examination:

Mr. Fabacher opened an account with us on July 20th, 1888, and kept it with us continuously from 1888 until the first of March, 1897.

Deposition of Jacob L. Baltz, Offered on the Part of the Contestant.

I reside in New Orleans. I have resided in New Orleans for about forty-six years. I knew the late Joseph Fabacher; I became acquainted with him in 1856; I was working for him; he was a German, but spoke English; he read the German and American papers; when I first knew him his first wife, Maria Anna Frey, was living with him; that was in 1856; they had two children, Andreas and Mrs. Antoinette Thormann. The boy Andreas is dead. I know Magdalena Frey. I became acquainted with Magdalena Frey when they came from Europe; I was working for Joseph Fabacher at the time. When I first knew Joseph Fabacher he was in the saloon business; we were great friends—were just like brothers; he was
818 engaged in a number of business enterprises in New Orleans, but finally settled down to the restaurant business; he first started in a small place and then he made big success of it.

From the time I first knew him up to the time of his death his residence was in New Orleans, except when he was in the country at his plantation in the parish of St. Landry. In the last years of his life his hearing was poor, I think, as also was his eyesight.

Cross-examination:

I have never seen him during the last four years of his life, and do not know where he lived or where he claimed his residence.

Deposition of Leopold Levy, Offered on the Part of the Contestant.

I reside at Second and Magazine streets, in the city of New Orleans, going on thirty-two years. I knew Joseph Fabacher; he came over the same time I did—Buzenberg, Bavaria, Germany; I met him in Buzenberg; I met him in Buzenberg with his first wife; I was a boy at the time. In 1865 I came to this city, and Mr. Fabacher was in partnership with a man in the brewery business, and after that I saw him occasionally, and he got down in the world, had nothing, and then he started a restaurant where Lawrence Fabacher keeps now, and made some money; when I knew him he lived on Prytania street; I never was at his house, but I know he lived uptown somewhere; I always thought that New Orleans was his home, and I know he had a place during the summer and went across the lake somewhere, I do not know where. I never asked him, you know.

819 Cross-examination:

I knew Mr. Fabacher pretty well. He was a very good business man. I do not think he could be influenced by anybody. He was a pretty clever man. I do not know that he was a strong-willed man or relied on himself. I do not think he was easily influenced. He was a man of good judgment and good sense. As to whether or

not he was a man when he made up his mind to do a thing he would do it; I could not swear to that. I never had much transactions with him. We talked about family matters, but never talked about business. He was physically a very strong man.

Deposition of Miss Emma Roth, Offered in Evidence on the Part of the Contestant.

I live in the city of New Orleans and am engaged in the typewriting business. I knew the late Joseph Fabacher for about fifteen or sixteen years. I saw him the last time at the Fabacher restaurant in November or December, 1896, and did not see him after that, that I know of. I had no conversation with him the last time I saw him. Previous to that time I used to go down to lunch and meet him very often, within the last three or four years. He was not engaged in any business during that time that I know of. I did not know that he moved from Prytania street to Calhoun street. I was at the restaurant quite often when Joseph Fabacher would take his departure—that is, he would leave the ladies' department, and I have heard him say that he was going home.

820 Cross-examination:

I have been in business only three years. I did not go to the Fabacher restaurant before I went in business. I usually sat near the desk in the restaurant on account of speaking to the young lady there.

I saw him the last time in November, 1896. I cannot remember when I saw him last before that date, because I went out of business in July, 1896, and seldom went there. I am not willing to say that I saw him between June and July last year, and I do not know whether or not he changed his residence. I do not know how the people in this case knew that I possessed this information. Mr. Troye asked me if I would come up to testify for his mother. I don't know that he told me anything about the case; I saw all about it in the papers. When Joseph Fabacher was leaving the restaurant his grand-daughter, Miss Josephine, whenever he would be on that *said*, would say, "Grandpa, are you going home?" and he would say, "Yes." That is all I can remember.

Deposition of Hugh J. McDonald, Offered on Behalf of the Contestant.

I live at 1526 Conery street, in the city of New Orleans. I am engaged in the marble-tomb business. I know where the tomb of Joseph Fabacher is, in St. Joseph's cemetery No. 1. It was built by my father, Hugh J. McDonald. My father died October 21, 1895. If I recollect right, that tomb was built in 1889. I do not know how much it cost. Its present value is about eighteen hundred dollars. The inscription on that tomb is, "Family tomb
821 of Joseph Fabacher." Mr. Fabacher is buried in this tomb. I do not know that any one else is buried there, but I am of the opinion that there is.

Cross-examination:

I think that tomb was built in 1889; you will find it on the tomb; I did not build it and do not claim any personal knowledge as to when it was built; I recollect that it was built in 1889; I recollect that, because I worked on the tomb myself.

Deposition of William Kohlman, Offered on Behalf of the Contestant

I am an assistant house surgeon of the Touro infirmary, in the city of New Orleans. When a patient first come to the infirmary we have a register and take his name, residence, age, and birth place, and after the patient dies or is discharged we give the nature of the desease on the register. These facts of what are a man's name, age, residence, and so on, is obtained either from the patient himself or from some of the relatives. I suppose that when Mr Fabacher came to the hospital that his name must have been registered. I do not know that I gave the certificate in this case. (Witness leaves to examine original certificate. After examining same returns and testifies in relation thereto as follows:) The certificate of death was signed by myself. When I make a certificate of that kind I got the data from the register. The fact that he was a native of Germany and that he was seventy-two years of age and that he was married and that he was fifty-three years in the city resided at No. 1716 Calhoun street, all that data was taken
822 by *by* me from the register; all this information.

Deposition of David Goldstein, Offered on the Behalf of the Contestant

I am employed as a clerk in charge of the Touro infirmary which is a public hospital for the sick. When a patient comes to that hospital he is first examined by the physician in charge to see if he has any contagious or infectious disease, and after he has complied with that rule he is admitted by the doctor; he comes to the office and is recorded on the books; he is then assigned to a room and usually pays in advance for a week. Our rules require that the name, age, residence, and nativity and the condition of each patient be taken down and recorded in the register; that is one of my duties. We usually receive this information from the patient himself when he is in a condition to give them to us himself; otherwise we get those facts from the persons or person who accompany him. Joseph Fabacher was admitted to the hospital on February 23, 1897, at ten o'clock.

Q. Did you take from him his name?

A. No, sir; I got it from his son.

Objected to.

Objection sustained.

Exception taken.

All of the facts that appear on the register with reference to th

age of Joseph Fabacher, his sex, nativity, and social condition and his residence were all received from Lawrence Fabacher.

823 Objected to as hearsay evidence.
Objection sustained, and exception taken.

When a patient is either discharged or dies the doctor writes a diagnosis of his case and his ailment and that is entered on the books (witness looking at a document produced). This is an abstract from the register of the Touro infirmary; it is in my own handwriting and is correct.

COUNSEL FOR CONTESTANT: We offer in evidence the following abstract from the register of the Touro infirmary:

Touro Infirmary.

No. 8410; occupation, none.
Name, Joseph Fabacher.
Age, 72; nativity, Germany; sex, male.
Residence, New Orleans, 42 years.
Social condition, married.
Disease, strangulated umbilical hernia.
Admitted February 23, 1897.
Died March 3rd, 1897.

D. GOLDSTEIN, *Clerk.*

Objected to by proponent.
Objection sustained. Exception taken.

Cross-examination:

Joseph Fabacher was brought to the Touro infirmary for an operation. Mr. Lawrence Fabacher and Mrs. Joseph Fabacher, his wife, came with him to the infirmary in a carriage. He walked into the hospital and I put him on the register, when he was admitted and became a fixed patient.

824 This operation was not as successful as we had expected it, and Mr. Fabacher remained at the infirmary sick and died there, and I have registered him as I have described. At the time of Mr. Fabacher's death I had been in the infirmary about two years. I knew Mr. Fabacher when he resided opposite the infirmary, but I was not an employee at the Touro infirmary while he was living there. I do not know when he gave up that house. We receive all kind of patients, both charity and pay patients, under all conditions except those I have stated.

If a patient was sent from the St. Charles hotel to the infirmary we would register him as a regular patient. We would register him as a resident of New Orleans, and then we have another line where we say, "Last place, from New York." We would register the place where the patient comes from last.

If a patient would be sent to the hospital by the proprietor of the St. Charles hotel we would have nothing at all to do with that, but put down the information as it was told to us. I do not know, as a matter of fact, whether Mr. Fabacher in February, 1897, was a

resident of New Orleans or not. He was well known, generally speaking, and I don't know whether he lived in Waukesha, Wisconsin, or not. He came there to the infirmary, and we usually ask, "How long are you a resident of New Orleans?" Lawrence Fabacher said, "42 years," and evidently he must have been a permanent resident of New Orleans. I knew him as a resident of New Orleans, and had known him for a long time, and did not know that he moved his residence to Waukesha only from hearsay.

825 *Deposition of Mathew McEnerny, Offered on the Part of Contestant.*

I reside at 1440 St. Mary street, New Orleans, Louisiana; have lived in this city 49 years. I did not know the late Joseph Fabacher. I am employed in the office of the New Orleans Picayune as assistant business manager. Joseph Fabacher was a subscriber to the New Orleans Picayune in 1896. The name of Joseph Fabacher appeared on our books on May 9, 1896, as a subscriber for three months to Waukesha, Wisconsin. The paper was stopped August 8, 1896; bill was paid August 6, 1896.

Cross-examination:

I do not know that Mr. Fabacher read any other paper, and neither do I know if he subscribed to any other papers.

Deposition of Octave J. Morel, Offered on the Part of Contestant.

I reside at 1730 Calhoun street, New Orleans, Louisiana. I knew the late Joseph Fabacher as a neighbor for the last two years and a half. He resided on Calhoun street part of the time during that period. I have no recollections as to what seasons of the year he resided here, and I cannot tell what place he was a resident of. During the two years I knew him he lived at No. 1716 Calhoun street. That is a few houses below me. He had some domestic animals. I saw a cow. I do not know whether it was his. I would see it grazing on the outside, opposite his place. It appeared to be his. It was taken into his place.

Cross-examination:

During the two years that I lived on Calhoun street I saw him occasionally as I went into the house. I have no personal knowledge as to where he was when he was not in the city. I heard
826 that he went to Waukesha in summer; that is all I know. He told me that he had a place there at Waukesha, but never told me that he was going there to live. The last conversation I had with him was a sort of a neighborly talk. He told me that he had some business with my father many years ago, and about two weeks before his death he was speaking to me about a misfortune that had happened one of our neighbors, and in connection with it he said, "When my time comes I will be ready to go," and the old man said, "Old Fabacher, you are next." In about two weeks or ten days after that he died.

Direct examination:

I considered him a resident here. I have seen him for the past two years. His daughter and a little boy, his wife and servants live with him. When they were away his house was watched by a private watchman. I seen him going in and out.

Deposition of G. H. Wormuth, Offered on the Part of Contestant.

I reside at 1835 Canal street, New Orleans, Louisiana. My place of business is 624 Custom-house street. I am a jeweler. I have been in this city two years. I knew the late Joseph Fabacher; he was a customer of mine. I saw him about two months before his death. I repaired watches for him; one was a Swiss watch. I repaired them and delivered them back to him. I do not know what seasons of the year I saw him here. As far as I know, he lived away uptown in New Orleans. I regarded this place as being his home and residence. I remember repairing a watch belonging to him which showed the days of the week and the dates of the month. I did not repair that. It was a very fine Swiss watch,
827 with automatic works showing the change of dates.

828 EXHIBIT "A."

Offered by contestant, showing the naturalization of Joseph Fabacher as a citizen of the United States, made out at a session of the sixth district court of New Orleans, La., bearing date March 26th, 1855.

EXHIBIT "B."

Offered in evidence by the contestant, being a duly certified copy of record, proceedings, and evidence in the case of Mrs. J. Fabacher against J. Fabacher, her husband, commenced in the fifth district court of the parish of New Orleans and filed therein January 12, 1874, the same being an action for divorce *a vinculo matrimonii*, upon the grounds and for the reason that the said Joseph Fabacher is living and has been living in open concubinage with Magdalena Frey for more than ten years. The answer of the def't shows a general denial of the facts alleged in the complaint, and showing that judgment was rendered in favor of Mrs. Joseph Fabacher, as prayed for, on the 22nd of January, 1874. It is ordered, adjudged, & decreed that there be a judgment in favor of the plaintiff, Mrs. Joseph Fabacher, and against the defendant, Joseph Fabacher, her husband, and decreeing a divorce *a vinculo matrimonii* between the said parties.

EXHIBIT "C."

Offered in evidence by contestant, the Revised Civil Code of Louisiana.

Objected to by proponent. Objection overruled, and exception taken, and said code was admitted in evidence.

EXHIBIT "D."

Offered in evidence by contestant, showing a duly certified copy of license issued by the deputy clerk of the parish of St. Landry, in the State of Louisiana, authorizing the celebration of marriage between Joseph Fabacher and Magdalena Frey, bearing date July 24th, 1874, together with the act of the celebration of said marriage by John J. Morgan, judge of the thirteenth judicial district court of said parish of Saint Landry, said record being authenticated under act of Congress.

EXHIBIT "F."

Offered in evidence by contestant, showing a duly certified copy of the record in the case entitled Joseph Fabacher *vs.* Lawrence Fabacher, the same being an action for ejectment, from
829 which it appears that Joseph Fabacher leased to Lawrence Fabacher for the term of three years, commencing on and running from the first day of June, 1891, and terminating on the 31st day of May, 1894, the premises known as number 23 Royal streets and numbers 102 and 104 Custom-house streets, in the city of New Orleans, Louisiana, for the purpose of conducting a restaurant business, in consideration of the monthly rental of $400 per month, to be paid by said Lawrence Fabacher at the end of each and every month.

EXHIBIT "G."

Offered in evidence by the contestant, the same being certificate of registration of Joseph Fabacher in the parish of Orleans, La., third precinct, twelfth ward, dated September 1st, 1891, signed by the supervisor of registration for the said parish of Orleans, showing thereon the name of Joseph Fabacher, age 66 years, and 47 years a resident of the State of Louisiana.

EXHIBIT "H."

Offered by the contestant, Code 123 of the General Assembly of the State of Louisiana, approved April 10th, 1880, printed in the acts of the legislature of Louisiana, entitled "An act to provide for the appointment of supervisor of registration for the parish of Orleans," etc.

EXHIBIT "H*a*."

Offered in evidence by contestant, showing a duly certified copy of the names of voters who voted in the fifth precinct, twelfth ward, at the congressional election held on the 6th day of November, 1894, in the city of New Orleans, La., on which appears the name of Joseph Fabacher, number 153, registration number 359.

EXHIBIT "H*b*."

Offered by contestant, an act number 181, approved July 12, 1894, of the acts of the General Assembly of Louisiana, entitled "An act to regulate, conduct, and maintain the puriety and freedom of elections and to provide the manner and time for holding elections and making the terms thereof," etc.

830

EXHIBIT "I."

Offered by contestant, the same being duly certified copy of an act of sale from Joseph Fabacher to Mrs. Josephine Benedict before Jefferson C. Wenck, a notary public, bearing date January 9, 1895, by which said instrument said Joseph Fabacher conveyed to said Mrs. Josephine Benedict certain real estate situated in the city of New Orleans, in the State of Louisiana, for the consideration of $8,550, in which Joseph Fabacher declares himself to be a resident of the city of New Orleans, Louisiana, together with the authentication thereof, according to act of Congress.

EXHIBIT "J."

Offered on part of contestant, the same being a duly certified cop*t* of an act of sale from Joseph Fabacher to Miss Elizabeth A. Pleasance, bearing date January 10, 1895, by *and* which said instrument said Joseph Fabacher sold and conveyed certain real estate in the city of New Orleans and State of Louisiana for the consideration of 61,550 dollars, before Jefferson C. Wenck, notary public, in which Joseph Fabacher describes himself a resident of the city of New Orleans, Louisiana, together with the authentication thereof, according to act of Congress.

EXHIBIT "K."

Offered by the contestant, the same being a duly certified copy of an act of sale from Joseph Fabacher to Theodore Broderick, before Jefferson C. Wenck, notary public, on the 11th day of June, 1895, by which said instrument Joseph Fabacher sold and conveyed to said Theodore Broderick certain real estate described therein and situated in the city of New Orleans and State of Louisiana, in the consideration of $10,000, part of which was paid in cash and part being amount described on said real estate, in which Joseph Fabacher describes himself as a resident of the city of New Orleans, Louisiana, with the authentication thereof, according to act of Congress.

EXHIBIT "L."

Offered by the contestant, the same being a duly certified copy of an act of *donation inter vivos* from Joseph Fabacher to Mrs. Pauline Gross *et al.*, before Jefferson C. Wenck, notary public, on the 17th day of June, 1895, by which said instrument said Joseph Fabacher

conveyed to the persons therein named, to wit, Pauline Gross, Matthias Troye, Josephine Troye, Joseph Troye, and Mary Troye, grandchildren of said Joseph Fabacher, the real estate described in such instrument and being situated in the city of New Orleans and State of Louisiana, and that by said instrument said persons held the legal title, subject, however, to the life estate of Mrs. Antoinette Thorman, daughter of said Joseph Fabacher, in which Joseph Fabacher describes himself a resident of the city of New Orleans, Louisiana, together with the authentication thereof, according to an act of Congress.

EXHIBIT "M."

Offered by the contestant, the same being a duly certified copy of abstract from the assessment-roll of the parish of Orleans, Louisiana, fourteenth assessment district, page 120, of the city of New
831 Orleans, square- 377 and 378, for the year 1895, on which appears: Entry 13, Joseph Fabacher; name-of streets, Prytania and Aline; number of lot and measurement of lots and residence, horses, etc., $150; carriages, $100; taxes paid November 4, 1895; number of receipt, 1386; household furniture, $500; jewelry and watches, $200. Number one, in same square: Name- of streets, Prytania and Aline; number of lots, 1–4; measurements, 31 feet and 3 inches by 130 feet in depth; cash value of land, lots, $9,500; taxes paid December 5, 1895; number of receipt, 1900, together with authentication of said abstract of assessment-roll, according to act of Congress.

EXHIBIT "N."

Offered in evidence by the contestant, the same being a certified copy of abstract from the assessment-roll for the parish of Orleans, Louisiana, for the year 1896, for the fifteenth assessment district, page 98, squares number 94 and 95, signed by D. T. Walshe, State tax collector, seventh district, parish of Orleans, Louisiana, together with authentication thereof, according to the act of Congress, on which appears: Entry 19, Joseph Fabacher; name of street, number 1716 Calhoun, residence; assessment paid August 24, 1896; number of bill, 400; assessment on household goods, furniture exceeding $500 in value, including books and all movable property, and chattels, $500.

EXHIBIT "O."

Offered in evidence by the contestant, the same being an abstract from the assessment-roll for the parish of Orleans, Louisiana, for the year 1895, together with the authentication thereof, according to an act of Congress, on which appears the name of Joseph Fabacher; name- of street-, Prytania and Aline; number of lots, 1–4; measurements of lots, 31 feet and $\frac{3}{26}$ of a foot by 130; assessment, cash value, $9,500; on the same assessment-roll appears the name of Joseph Fabacher, Prytania and Aline streets, residence; horses, mares, mules, cattle, $150; carriages, $100; household goods, furniture exceeding $500, $500; jewelry, watches, and silverware, $200.

832

EXHIBIT "Q."

Offered in evidence by the contestant, the same being a duly certified copy of an abstract from the assessment-roll for the parish of Orleans, in the State of Louisiana, for the year 1896, for the sixth district, parish of Orleans, duly authenticated according to the act of Congress, on which appears the name of Joseph Fabacher; residence, 1716 Calhoun street; assessment on household goods and furniture exceeding $500 in value, etc., $500.

EXHIBIT "R."

Offered in evidence by the contestant, the same being a copy of receipt number 400, State tax for the year 1896 for the parish of Orleans, Louisiana, dated New Orleans, August 24, 1896, issuing to Joseph Fabacher for $3.45; certificate signed by D. T. Walsh, tax collector of the sixth district, parish of Orleans, showing assessment on furniture exceeding $500 in value, said tax being paid — Theodore Broderick and said certificate being duly authenticated according to act of Congress.

EXHIBIT "S."

Offered in evidence by the contestant, the same being a certificate signed by the comptroller of the city of New Orleans, Louisiana, showing tax assessed against Joseph Fabacher for the year 1895 on property situated in the fourteenth assessment district, in said parish of Orleans, amounting to the sum of $280, and were paid by him, together with authentication thereof under the act of Congress.

EXHIBIT "T."

833 Offered in evidence by the contestant, same being a certificate of payment of taxes on personal property assessed against Joseph Fabacher for the year 1895 and paid, said property being situated in the fourteenth assessment district of the parish of Orleans, Louisiana, amounting to the sum of $19.00, duly authenticated, according to act of Congress.

EXHIBIT "U."

Offered in evidence by the contestant, the same being a certificate showing that taxes assessed against Joseph Fabacher in his name on personal property situated in the fifteenth assessment district of the parish of Orleans, Louisiana, amounting to $10, for the year 1896, were paid and duly authenticated under the act of Congress.

EXHIBIT "V."

Offered in evidence by the contestant, and same being a duly certified copy of abstract from the original record in the possession of

the jury commissioners of the parish of Orleans, Louisiana, signed by E. O. Mellancon, president of the board of jury commissioners, showing that Joseph Fabacher was summoned to appear before the jury commissioners of the parish of Orleans, in the city of New Orleans, in the State of Louisiana, on the 6th day of January, A. D. 1897, at ten o'clock a. m., and that in answer to said summons so issued to him he reported and was excused, being 72 years old, said copy of said abstract being duly authenticated according to the acts of Congress. In connection with the offer of Exhibit "V," we offer act number 170 of the acts of the General Assembly of the State of Louisiana, approved July 12, 1894, and also act number 27 of the General Assembly of the State of Louisiana, approved June 20, 1890, said acts being published as the laws of Louisiana for the year 1890.

Objected to as incompetent and immaterial and not proved, as provided by law, and which was overruled and exception duly taken by proponent.

EXHIBIT "W."

Offered in evidence by the contestant, same being a certificate from the board of health, records of births, marriages, and deaths, parish of Orleans, State of Louisiana, of the death of Joseph
833½ Fabacher, showing that the deceased was 72 years of age at the time of his death, on the 3rd of March, 1897, and also showing that at the time of his death he resided at 1716 Calhoun street, in the city of New Orleans, Louisiana. In this connection we offer act number 80 of the acts of the General Assembly of the State of Louisiana, approved April 20, 1897, and published in the session acts of that year, the same being an act to reorganize a more efficient board of health of the State of Louisiana.

EXHIBIT "X."

834 Offered in evidence by the contestant, the same being a duly certified record of the succession of Joseph Fabacher, deceased, pending in the civil district court for the parish of Orleans, in the State of Louisiana, the same being No. 52941 of the records of said civil district court, division "B," and duly authentic*tade* according to the act of Congress. A true copy of said record is as follows, to wit:

Letters.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division B.

Succession of JOSEPH FABACHER. No. 52941.

This shall certify to all whom it may concern that on the 30th day of March, in the year of our Lord one thousand eight hundred and ninety-seven, and the one hundred and 21 of the Independence of the United States of America, an application was made to the

Honorable Fred D. King, judge of the civil district court for the parish of Orleans, division B, by Mrs. Antoinette Thorman (born Fabacher), praying that she might be appointed administratrix of the succession of Joseph Fabacher.

Now, know ye that Mrs. Antoinette Thorman (born Fabacher) has been, and she is hereby, appointed administratrix of the said succession of Joseph Fabacher, and that she has fulfilled all the requisites of the law.

Witness our hand- and the seal of the civil district court this 30th day of April, in the year of our Lord one thousand eight [SEAL.] hundred and ninety seven, and in the one hundred and twenty-first of the Independence of the United States.

(Signed) FRED D. KING, *Judge.*
F. E. PETERSON, *D'y Clerk.*

A true copy.
F. E. PETERSON, *D'y Clerk.*

835 Civil District Court, Parish of Orleans.

Succession of JOSEPH FABACHER. No. 52941.

To the Honorable Fred D. King, judge of the civil district court for the parish of Orleans, division "B:"

The petition of Mrs. Antoinette Thorman and by her husband herein joined, authorized, and assisted respectfully shows that the inventory of the property belonging to the succession of Joseph Fabacher, deceased, has been duly taken in conformity to law by Arthur B. Leopold, a notary public, of this parish, in obedience to the order of this honorable court dated March 30th, 1897, a duly certified copy whereof is herewith filed and made part hereof; that said inventory should be approved and homologated according to law.

Wherefore petitioner prays that the inventory of the property belonging to this succession taken by Arthur B. Leopold, notary public, of this city, on the 5th day of April, 1897, be approved and homologated according to law, and for general relief.

(Signed) E. HOWARD McCALEB,
Att'y for Petitioner.

A true copy.
F. E. PETERSON, *D'y Clerk.*

Order.

Let the inventory taken by Arthur B. Leopold, notary public, on the 5th of April, 1897, be approved and homologated as prayed for and according to law.

New Orleans, April 22nd, A. D. 1897.

(Signed) FRED D. KING, *Judge.*

836 UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans,
Parish of Orleans.

By virtue of and pursuant to an order of the Honorable Fred D. King, judge of the civil district court for the parish of Orleans, division "B," bearing date March 30th, 1897, directing that an inventory and appointment be made by me, the undersigned notary, of all the property and effects situated in this parish and belonging to the succession of Joseph Fabacher, deceased, said order having been rendered upon the petition of Mrs. Antoinette Thormann (born Fabacher), the sole surviving heir and legitimate child of said deceased, Joseph Fabacher, praying to be appointed administratrix in the proceedings entitled Succession of Joseph Fabacher, No. 52941 of the docket of said court, a duly certified copy of which said petition and order of court therein are hereto annexed for reference—

Be it known that on this fifth day *day* of the month ——, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States of America the one hundred and twenty-first, I, Arthur B. Leopold, a notary public in and for the parish of Orleans, State of Louisiana, aforesaid, duly commissioned and qualified, and assisted by (-st) Bernard Bruen, Esq., attorney-at-law, appointed by said honorable court to represent the absent heirs; (2nd) Messrs. B. Dreifus and G. P. Molloy, the appraisers appointed by said honorable court and duly sworn to faithfully value the property to be inventoried herein, proceeded to No. 1716 Calhoun street, in the 7th district of this city, the residence of Joseph Fabacher, deceased, at the hour of 4.15 o'clock p. m., and then and there requested Mrs. Magdalena Frey, known as the widow of Joseph Fabacher, deceased, to point out to me, notary, the property and effects of said deceased, Joseph Fabacher, for the purpose of taking the inventory of said deceased in accordance with the order of said honorable court, when, after interrogation, the said
837 Mrs. Magdalena Frey, known as the widow of Joseph Fabacher, deceased, informed me, notary, that the deceased was not the owner of the furniture, movables, or effects contained in said premises; that the same were owned entirely and exclusively by Mr. Lawrence Fabacher.

Whereupon I, notary, postponed the further taking of said inventory and notified all the aforesaid parties to meet at my office on Saturday, April 10th, 1897, for further taking of said inventory. Thus done and passed in the city of New Orleans on the day, month and year hereinabove written in the presence of Messrs. E. H. McCaleb, Jr., and Frank L. McCaleb, competent witnesses, residing in this parish, who have signed this procès verbal, together with said

appraisers, the attorney representing absent heirs, and me, notary, after due reading of the whole.

(Original signed) BERNARD BRUENN.
B. DREIFUS.
G. P. MOLLOY.
ARTHUR B. LEOPOLD, *Not. Pub.*

Witnesses:
E. H. McCALEB.
FRANK L. McCALEB.

And now, on this 10th day of April, 1897, at the hour of 9 o'clock a. m., in the presence of the aforesaid parties, I, notary, did proceed to the further taking of the inventory of said Joseph Fabacher, deceased, as follows, to wit:

"*Tomb.*"

One marble tomb in lot situated in St. Joseph cemetery No. 2, bearing the inscription family of Joseph Fabacher; also two (2) galvanized-iron sofas and five (5) vases, valued by said appraisers at the sum of thirty-five hundred dollars ($3,500.00), and there being nothing further to be included in this inventory of which I, notary, have been able to inventory, I do now close the same.

In testimony whereof said appraisers, attorney for absent heirs, and witnesses, together with me, notary, have signed this inventory on this 10th day of April, A. D. 1897, after reading of the whole.

837½ (Signed) BERNARD BRUENN.
" B. DREIFUS.
" G. P. MOLLOY.
" ARTHUR B. LEOPOLD, *Not. Pub.*

Witnesses:
E. H. McCALEB, JR.
FRANK K. McCALEB.

A true copy.
(Signed) ARTHUR B. LEOPOLD, *Not. Pub.*

A true copy.
F. E. PETERSON, *D'y Clerk.*

Civil District Court for the Parish of Orleans, Division "B."

Succession of JOSEPH FABACHER. No. 52941.

Due and public notice having been given, according to law, of the filing of the application of Antoinette Thormann, wife of Charles W. Thormann, for letters of — on this estate, that no opposition has been filed thereto, and that the legal holidays for opposing the same having elapsed—

It is therefore ordered that said Antoinette Thormann, wife of Charles W. Thormann, be appointed administratrix of this succes-

sion, and that letters as such issue to her on her complying with the requisites of the law.

Judgement rendered and signed April 22nd, 1897.

(Signed) FRED D. KING, *Judge.*

A true copy.

F. E. PETERSON, *D'y Cl'k.*

Proof of Judgment.

Civil District Court for the Parish of Orleans, Division B.

Succession of JOSEPH FABACHER. No. 52941.

P. A. Ducoing, being duly sworn, says that the application of Antoinette Thorman, wife of Charles W. Thorman, praying for letters of administration on this estate has been published in the New Orleans Picayune, a newspaper published daily in the city of New Orleans, on the 31 March and 4th, 9th of April, 1897, in the English language, and in the New Orleans Bee on the 31 March and 4th, 6th, 7th of April, 1897, in the French language, and that no opposition has been filed thereto.

—— ——.

Sworn to and subscribed before me this 22nd day of April, 1897, and certified correct.

F. E. PETERSON, *D'y Clerk.*

A true copy.

F. E. PETERSON, *D'y Clerk.*

838 (*Notice of Appointment of B. Bruenn, Esq.*)

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division B.

Succession of JOSEPH FABACHER. No. 52941.

To B. Bruenn, Esq., attorney and counselor at law, New Orleans.

SIR: Please to take notice that you have been appointed by this court to represent the absent heirs in the succession of Joseph Fabacher.

New Orleans, March 30th, 1897.

(S.) F. E. PETERSON,
Deputy Clerk.

A true copy.

F. E. PETERSON, *D'y Cl'k.*

Oath of Appraisers.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, Division B.

Succession of JOSEPH FABACHER. No. 52941.

Before me, F. E. Peterson, deputy clerk of the civil district court for the parish of Orleans, personally came and appeared B. Dreifus and G. P. Molloy, who solemnly swear that they will well and faithfully perform all and singular the duties of appraisers to value the property to be inventoried in the above-entitled matter, so help them God.

(Signed) B. DREIFUS.
" G. P. MOLLOY.

Sworn to and subscribed before me, New Orleans, March 30th, 1897.

(Signed) F. E. PETERSON,
Deputy Clerk.

A true copy.
F. E. PETERSON, *D'y Cl'k.*

839 (Law stamp) $5.

To the honorable the judges of the civil district court for the parish of Orleans:

The petition of Antoinette Thormann, wife of Charles W. Thormann, residing in this city, and by her husband herein joined, authorized, and assisted, respectfully shows:

That your petitioner's father, Joseph Fabacher, departed this life on the 3rd of March, 1897, aged about 72 years, all of which will more fully and at large appear by a duly certified copy of the certificate of death from the board of health, recorded of births, marriages, and deaths, marked Exhibit "A" and made part hereof.

That the said deceased was at the time of his death and many years before a citizen of Louisiana, domiciled and residing in the city of New Orleans; that said deceased left property in this city and within the jurisdiction of this honorable court.

That your petitioner is the sole surviving heir and legitimate child of said deceased, issue of his marriage with petitioner's mother, Mary Frey, which marriage was celebrated at the St. Mary's church, in this city, on the 13th of May, 1850.

That your petitioner's mother, Mary Frey, obtained a judgment of divorce against said Joseph Fabacher, deceased, on the 27th day of January, 1874, as will more fully and at large appear from the record and proceeding in the case entitled Mrs. J. Fabacher *vs.* Joseph Fabacher, her husband, No. 5314 of the docket of the late fifth district court for the parish of Orleans, transferred to and numbered No. 44197 of the docket of this court, here referred to and made part hereof.

That they were two children born of said marriage between your petitioner's mother, Mary Frey, and said Joseph Fabacher, deceased, her father, to wit, your petitioner, born on the 31st day of July, 1853, and your petitioner's brother, Andreas Fabacher, who departed this life in this city about ten years ago, leaving no descendents.

That an inventory should be taken of the property and
840 effects belonging unto the succession of said deceased, Joseph Fabacher, appraisers appointed to value the same, and an attorney for absent heirs appointed, contradictorily with whom all proceedings may be carried on.

That your petitioner desires and is entitled to be appointed administratrix of the succession of her deceased father, Joseph Fabacher, and is ready and willing to take the oath and give bond.

Wherefore petitioner prays that an inventory of the property and effects belonging unto the succession of Joseph Fabacher, deceased, be taken by Arthur B. Leopold, a notary public of this parish; that appraisers be appointed to value the same; that an attorney for absent heirs be appointed, and that your petitioner, after due advertisements and delays, be appointed and confirmed administratrix of the succession of her said deceased father, Joseph Fabacher.

And she prays for all general and equitable relief.

(Signed) E. HOWARD McCALEB,
Attorney for Petitioner.

Mrs. Antoinette Thormann, born Fabacher, being duly sworn, deposes and says that all the facts stated in the foregoing petition are true and correct.

(Signed) ANTOINETTE THORMANN.

Sworn to and subscribed before me this 29th day of March, A. D. 1897.

(Signed) ARTHUR B. LEOPOLD,
Notary Public.

(4 Louisiana law stamps, 50.)

841 UNITED STATES OF AMERICA,
State of Louisiana, Parish of New Orleans.

Office of the board of health, recorder of births, marriages, and deaths.

Be it remembered that on this day, to wit, the fourth of March in the year of our Lord one thousand eight hundred and ninety seven, and the 121st of the Independence of the United States of America, before me, S. R. Olliphant, M. D., president board of health and *ex officio* recorder of births, marriages, and deaths in and for the city of New Orleans and parish of Orleans, personally appeared Henry Tharp, an undertaker, a native of this city, residing corner of Julis and Magazine streets, who hereby declares that Joseph Fabacher (white), a native of Busenberg, Germany, aged 72 years, departed this life yesterday (3rd March, 1897) at the Touro infirmary

in this city; cause of death, strangulation of umbilical hernia. Certificate of Dr. W. Kohlmann.

Deceased was married 53 years in city and resided at No. 1816 Calhoun St.; birthplace of parents, Germany.

Thus done at New Orleans in the presence of the aforesaid H. Tharp, as also in that of P. H. Lanauze and L. B. Geldbach, of this city, witnesses, by me requested so to be, who have hereto set their hands, together with me, after the reading hereof, the day, month, and year first above written.

(Signed) H. THARP.
P. H. LANAUZE.
L. B. GELDBACH.
S. R. OLLIPHANT, A. D.,
President Board of Health and ex Officio Recordere.

I do certify the foregoing to be a true and faithful copy from the original recorded in book marked No. 113, folio 313.

In testimony whereof I have set my hand and affixed the seal of my office, at the city of New Orleans, this twenty-fourth day of March, in the year one thousand eight hundred and ninety-seven, and the 121st of the Independence of the United States of America.

(Signed) P. H. LANAUZE,
Deputy Recorder of Births, Marriages, and Deaths, Parish of Orleans.

A true copy.
F. E. PETERSON, *D'y Clk.*

842 Let petitioner's application for letters of administration on this estate be published according to law; let the inventory herein prayed for be made by Arthur B. Leopold, notary public, according to law, and let B. Dreifus and G. P. Lolloy be appointed and sworn as appraisers to value the property to be inventoried, and let B. Bruein, Esq., attorney and counselor at law, be appointed to represent the absent heirs.

New Orleans, March 30th, 1897.

(Signed) FRED D. KING, *Judge.*

A true copy.
F. E. PETERSON, *D'y Clk.*

843 EXHIBIT "Y."

Offered in evidence by the contestant, the same being a certified copy of a petition for a writ of sequestration for inventory and for appraisers, filed in and issued out of the civil district court for the parish of Orleans, city of New Orleans, State of Louisiana, in the matter of the succession of Joseph Fabacher, deceased, wherein Antoinette Thorman, the contestant herein, was appointed by said court as the administratrix of the succession of said deceased. It is alleged in said petition, among other things, that the appraisers and the notary — appointed to take an inventory of the property and effects belonging to the succession of said deceased situated in the city of

New Orleans, in the State of Louisiana, and that said notary called at the late residence of the deceased, number 1716 Calhoun street, in said city of New Orleans, for the purpose of taking an inventory, as aforesaid, and that Mrs. Magdalena Frey Fabacher, claiming to be the widow of Joseph Fabacher, deceased, falsely stated and informed said notary that the deceased was not the owner of the furniture, movables, or effects contained in said premises, but that said goods and effects were owned entirely and exclusively by Lawrence Fabacher, son of said deceased, and that upon such petition being filed in the said court, on the 11th day of October, A. D. 1897, order was made upon said last-mentioned date by the said court that a writ of sequestration be issued as prayed for, and the same was issued according to law, and that thereafter the said court ordered the release of the property sequestered in the above-entitled proceedings upon the condition that Mrs. Magdalena Frey Fabacher and Lawrence Fabacher execute a bond in the sum of seven hundred ($700) dollars, with good and solvent surety, conditioned as the law directs, which order was dated on the 12th of October, 1897.

It further appears from said records that Lawrence Fabacher filed his separate answer in the above proceedings, disclaiming any interest whatever in the subject-matter of the demand of the petition of Antoinette Thorman for inventory, seizure, etc., and
844 declared that he had no interest whatever as owner, agent, or possessor for himself or as agent for any other person as owner or possessor in said property, and prayed that the said proceedings be dismissed as to him, and that thereafter he joined Mrs. Frey Fabacher as the surety on her bond for the return of said sequestered property which was inventoried at the sum of $1,381.70. "One Charles F. Buck, of the city of New Orleans, appeared for Magdalena Frey, widow of Joseph Fabacher, deceased, and *and* protested in her name and in the names of all the legatees of the deceased that the order upon which the sheriff was proceeding in said sequestration was utterly null and void, the court being without jurisdiction in the premises; and the facts were well known to the pretended administratrix, Mrs. Antoinette Thorman, that Joseph Fabacher at the time of his death was a resident of and domiciled in the State of Wisconsin, city of Waukesha; that he left a will, executed under the laws of that State, wherein he disposed of all of his property; that its provision- effect a disposal of all the effects contained in the house 1716 Calhoun street; that said will was duly probated and ordered executed and a testamentary executor appointed, all after a full trial and contest over said will by Antoinette Thorman, contestant, the judgment being rendered on September 1, 1897, of the court of proper jurisdiction of said county of Waukesha, State of Wisconsin.

For which reason the order and proceeding in which same was rendered to inventory the movable property of the deceased Joseph Fabacher are absolutely null and void because the court is without jurisdiction *ratione materia* or *personæ* to assume any control of the personal property of the deceased or to appoint an administratrix to his estate.

And this protest is made for the purpose of reserving all rights and notifying all parties, the notary, sheriff, and litigants, that their entry into the premises is a forci-le and illegal entry under an order absolutely void for want of jurisdiction, constituting a wrong and trespass for which the right to seek redress is reserved.

And the legatees under the will specially protest upon further ground that, Joseph Fabacher's estate being solvent, they are the owners of whatever property coming from him may be found in the house.

(Signed) CHARLES F. BUCK, *Att'y.*"

"And that — said appearances by said Charles F. Buck, attorney for said Magdalena Frey and other legatees in the will of said deceased, the following was made in said matter, to wit: On motion of E. Howard McCaleb, Esq., attorney for Mrs. Antoinette Thorman (born Fabacher), administratrix of this succession—

It is ordered that the suit herein instituted against Lawrence Fabacher and Mrs. Magdelena Frey Fabacher be discontinued at plaintiff's costs."

We hereby consent to the above, waiving and renouncing all claims growing out of the writ of sequestration issued herein against defendants.

(Signed) BUCK, WALSHE & BUCK,
H. P. DART, *Att'ys for Defendant.*

845 EXHIBIT "Z."

Offered in evidence by the contestant, the same being a certified copy of power of attorney duly authenticated according to act of Congress and given by Joseph Fabacher, the deceased, to Lawrence Fabacher, his son, on May 23, 1887, from which it appears that said deceased appointed and constituted the said Lawrence Fabacher as his agent and attorney-in-fact to transact, manage, and conduct all and singular his affairs and business and concerns connected with and appertaining to his restaurant and other business, to demand, collect, and receive of and from all persons all moneys, goods, and debts due, owing, coming to, and belonging to him and to receipt for the same; also to have the power to appear before all courts of law and equity and there to do and prosecute and defend as occasion shall or may require, to make, deposit, and to draw all moneys out of bank by check or otherwise, and to borrow not exceeding the sum of two thousand ($2,000.00) dollars should it be necessary to do so in transacting the business of said restaurant, and generally to do and perform all and whatever may be requisite and necessary in
the premises, and ratifying and confirming all the acts of said
846 attorney may lawfully do or cause to be done; said power of attorney was duly recorded in the office of the custodian of notarial records for the parish of Orleans, Louisiana.

Exhibit B B.

Offered in evidence by the contestant, the same being a duly certified copy of the return of the assessor for the city of Waukesha, in the county of Waukesha and State of Wisconsin, for the year 1896, sworn to by Joseph Fabacher, the deceased, on the 26th day of June, A. D. 1896, from which it appears that he made return as taxable personal property to the amount of ($90.00) ninety dollars, made up of the following items: Horses of all ages, $40.00; wagons, carriages, and sleighs, $30.00, and gold and silver watches, $20.00; and that the said deceased gave no account and made no return in his statement to said assessor that he owned or possessed any notes, bonds, mortgages, or other securities for debts due under section 1056 of the Revised Statutes.

847 Depositions taken on behalf of the proponents herein *and* several witnesses at New Orleans, Louisiana, the 11th day of June, A. D. 1897, and introduced in evidence upon the trial in this matter both in the county and circuit courts in and for Waukesha county, Wisconsin.

Henry Rice, witness for proponent, testified as follows:

I have lived in New Orleans since 1840. I have been in the hardware business exclusively for the last twenty-five or thirty years. I knew the late Joseph Fabacher; am a member of the well-known firm of Rice, Born & Co. I have known Fabacher about forty years; we were neighbors. I did not know that he was in business at all, except attending to his real estate; he had retired from business. In 1893 and 1894 he lived on the corner of Aline and Prytania. He made several trips to Waukesha. He gave up his house in Prytania street about a year or two ago. He went to Waukesha and came back again—that is, to wind up his business. He was in the habit of going to Waukesha in late years. I had some talk with him in regard to his giving up his house on Prytania street; in regard to his intentions in that respect. I was there one morning and saw a notice of sale of property along there and I had a talk with him; I asked him, "I see you have got the property up for sale," and he says, "Yes; it has been a great deal of annoyance to me and I have concluded that I am going to sell all my property and put my effects in shape where I will have no plumbers, no painters, or no people to annoy me as they do here. I will get out of that and I will put it into something (motioning with his fingers). You can cut them off." I was satisfied that he was going to take
848 his money out of real estate and put it into bonds and cut the coupons off. He told me, "I have not got any more use for New Orleans." He says, "If it was not for coming down and seeing the children I would not come down here at all." He spoke of having tried the summer and a little winter up there, and said he did not stay the whole winter, but a part of it. He thought he could stand the climate up there; it agreed very much with him and he

was very well pleased. He said, "I have my horses there and carriage and all, and I am going back there as soon as I can." In talking about his home there he said, "It is a great place for fine horses and good-looking women." I am satisfied that he was bent on just staying there. He described his house to me a half a dozen times. He told me he had about sixteen or seventeen thousand dollars put in it—built up on a high place and had fine water, and would like to have me very much to come there and spend a little while with him. It was his calculation to live there permanently. I know he made a remark one day in reference to a euchre party, "I do not believe I will have many more chances to play with you, for I am going away from here for good." He declared that he was going away, that's all, and we would lose one of our four in the party that we could depend on.

He said, "I am going there and am going to stay there. I have all my interests there and I expect to die there." This was right after the time he was closing out here. I know he did afterwards go there. I saw him during his last visit before his death. I had a conversation with him and he said "that he wished he was
849 back there." He was not feeling as well here as he was if he had been back. He was a little under the weather when I saw him. I think it was about ten days before he died. He must have been sick. He did not say what had brought him down here. He spoke of his intention of going back again. He was here visiting, because when I asked him why he didn't move his horses down he said, "It would not be worth while at all. I am going right back again."

Cross-examination by Mr. McCaleb:

I had this conversation with him about his leaving here to live at Waukesha after he had closed out and got everything sold out. He did not live any longer than a month on Calhoun street, in this city, before he died. It was a very short time after he came here. I can't say that I saw him here in the winter of 1895 and 1896. I saw him in the summer of 1895. I saw him in the summer of 1896 before he started. He left here to spend the summer; I don't know exactly what month; about May or June.

At the time he left in 1896 he was living on the corner of Aline and Prytania; that is the old homestead. I saw notices posted for the sale of the property in 1896. I could not say exactly; it might be 1895. I am not sure, but either 1895 or 1896.

I could not say exactly how old he was. He always claimed that he was not any older than I am, but I am sixty seven now and I always put him about seventy-one or seventy-two. About two or three weeks before his death he told me he was going back to Waukesha. He says, "I don't want to live here; I am feeling bad, and I want to go right back again."

I attended his funeral. His death was announced in the
850 papers. He was very well known here and had a large circle of friends. He had a big family. I know that he told me

that twenty-two of them was his own, something like that, and he went on to thirty-six, I believe, grandchildren. He had a car-load of them here. He was very much attached to his family. They all lived here.

This man and myself were very intimate, and we talked almost daily. He used to tell me a great deal of little things that I do not think he would tell anybody else. I dealt with all of the Fabacher boys indirectly. They are all in business. You could see the Fabacher wagons running around all over town—bakery wagons, grocery wagons, and beer wagons. He had a very large funeral. He was very well known here.

I can't say that I ever really saw that man under the influence of liquor so much so that he would not know what he was doing. He had his ice-box and he had all l-ttle notions in there. I call a man under the influence of liquor when he don't know what he is doing, really. I never saw him in that fix. He always knew everybody that came around and was pleasant; sat down and chat-ed with them; but I always thought he had his reason and knew what he was talking about, and could play a mighty good game of euchre, I know.

I don't know exactly who represented him here when he was gone or was his agent, but if I was going to look for his friend to represent him I should have gone to Lawrence Fabacher here. He was the oldest boy and appeared to always attend to his father's business.

Redirect by Mr. BUCK:

Fabacher was a man that formed his own ideas and a man of good sound will. He was a man who acted upon his own
851 judgement. He was a good business man and always managed to come out on the right side, no matter what he was doing. He was stubborn, too. He was a very hard man to change. He was a little hard of hearing.

I know Mrs. Fabacher. If the country was full of those kind of good housekeepers it would be fortunate. She was what we call a thoroughly good housekeeper. I could not help but notice it, because everything was in nice order. I used to go out and in there very often. The children were all pretty well behaved. I do not think she had any reason to complain about any of them. I know she was a good clean housekeeper, attended to her business, and appeared to be only happy when she was at home in a comfortable home dress. There was nothing ever said against her reputation as a woman or housewife, and she had a good reputation for moral character, too. She worked a great deal at home; I know that, because I went into the kitchen and she was bossing the stove on several occasions.

Way back as far as a young man I can recollect of Fabacher in a rest-urant, and then he went into the country and came back, and I believe he started a restaurant again. During the war he was always in the restaurant business, until he put the business over

into the boy's name. The last four or five years he had nothing to worry about at all. He lived perfectly easy at home.

During all this time I never heard anything against the moral character or reputation of Mrs. Fabacher; not the first word. I never saw her out at all. She was only happy at home. It looked to me like she was comfortable at home and wanted to be home all the time.

852 Recross-examination by Mr. McCaleb:

I could not say how much Mr. Fabacher was worth; he was always comfortable. I did not know his first wife. I could not pick out the children of his first wife. The first I ever knew of Fabacher he was quite a young man and could not have been more than sixteen or seventeen years of age; he was out on Washington street tending bar; it must have been about 1847 or 1848, maybe before that.

I knew him before he went to California, and that was in 1850; I knew him for five years before that time. I don't know when Fabacher was divorced from his first wife; I never talked to him about those things.

Bernard McCloskey, witness for proponent, testified as follows:

Direct examination by Mr. Buck:

I am a member of the bar of this city; have lived here seventeen years and practiced law about thirteen years. I met Mr. Fabacher once only. In the winter of 1894 I was examining title to some property bought by Mrs. Bessie Pleasants from Fabacher; the property, I believe, was sold at public auction, and I went to Mr. Wenck's office when the deed was passed, and while there Mr. Fabacher spoke to me about a lawsuit I had for Peter Fabacher. I asked him why he was selling these properties, if they were good investments, and he told me that he was going to live in Waukesha, and then talked to me about Waukesha. I had been there six times, and we had a general conversation about Waukesha. Since this I
853 was always under the impression that Mr. Fabacher lived in Waukesha. I cannot recall all the details of the conversation; it was a general conversation. He was talking about Waukesha and what kind of a place it was and why he was selling these properties, and he informed me that he was going to live in Waukesha. I think it was in November or December, 1894, when these properties were sold.

I am an attorney for the levee board, the Hibernia national bank, the Hibernia Insurance Co., combined cotton presses in New Orleans, dock commission, and five or six other corporations.

Gen. EUGENE MAY, a witness for the proponents, testified as follows:

Direct examination by Mr. BUCK:

I live in the city of New Orleans; I lived here 51 years, barring the time of the war. I have known Joseph Fabacher about six years. I have resided since the war on Perrier and Peniston street, and is a short distance from Aline and Prytania streets.

Fabacher told me that it would be necessary for him to quit here, and that he intended to locate in Waukesha; he told me this in the restaurant. For a long period of time I was in the habit of taking my dinner there every day, or my lunch, and we were quite friendly; we always consulted each other; I seldom went there without having a little joke with him.

I am a druggist; my business is at the corner of Chartres and Canal; I employ thirty-six people. It is a short walk from here to the restaurant. Fabacher informed me that he intended to sell all of his property, and in passing in the Prytania car I saw the signs upon two properties near the Touro infirmary, one of which was his residence and the other was a double cottage on a triangle just below.

854 He spoke to me about quitting here and going to Waukesha on several occasions. He told me that his physicians had decided that it was necessary for him to leave here, and that he would locate in Waukesha. He was very much pleased with it. He told me he liked the place very much. He said nothing about having established himself, because at that time he was contemplating building. He told me he was going to live there altogether.

I never visited him at his house and don't know anything about his family.

Cross-examination by Mr. MCCALEB:

I saw him back here after he told me he was going to live there altogether. I think I saw him here during the winter of 1895 and 1896, and I think I saw him here also during the winter of 1896 and 1897 up to the time of his death, on the 3rd of March, 1897. I am inclined to think that I saw him here during the winter of 1894 and 1895. After he had told me that he was going away to Waukesha to live there altogether I saw him back here very frequently during the winter months in consecutive years.

I had these conversations with him regarding his going to Waukesha to live about two or three years ago. I don't remember when these properties were sold. I attended his funeral. I saw the death notice in the Times-Democrat or the Picayune.

He was buried from the house on Calhoun street. His body was taken from there to the Jesuits' church, on Baronne street, and was buried in St. Joseph's cemetary No. 2, on Washington street.

OTTO THOMAN, a witness for the proponent, testified as follows:

855 Direct examination by Mr. BUCK:

I have lived in this city all my life, fifty-four and a half years. I have known Mr. Fabacher since 1853. I know that he established a restaurant at the corner of Royal and Custom-house streets. I remember he took the restaurant on Gravier street about ten or fifteen years ago, I suppose. He was not in business during the last few years that I have known him; he had retired. He was living at the corner of Prytania and Aline street, the same neighborhood as I live in, three or four blocks away. I remember the time that he sold the property at the corner of Foucher and Prytania, those two-story double houses there. I can't remember the year, but I was surprized that he sold it, and I asked him, "How is — you are selling your property?" "Well," says he, "I want to sell my property and go away from here. I want to get out of New Orleans, sell my property, and I am going to Waukesha to live."

I know that he moved away, but I don't know anything about the furniture. Since the sale of the property he has not been living at that place. I know that when he came back here he lived up on Calhoun street. He lived here during the winter months, but he told me that he just simply had quit here on account of his health. When he lived here he was sick and he could not live here any longer, and when he was in Waukesha he was a well man, and he had made up his mind that in order to live he had to go there and live there. He told me that a dozen times. I had a conversation with him on that subject during his last visit prior to his death.

856 He told me all the time that the only reason that he came here during the winter was because his wife wanted to come here and see the children, and that he, of course, came here with her for two months, but I remember positively he was late coming here in the fall, and he was very early in going away from here during the spring, and this time he told me he came down because his wife wanted to come down and see the children.

I know all the children and know the youngest one, Jacob, who is at Springhill college now; he is a good friend of my little boys. I visited Joseph Fabacher's house very often and know his wife; she is a very good housekeeper, splendid housekeeper; always appeared to me to be a first-class woman in every respect and a good mother. I know all of the children; they are in good business standing here in this community; they always take care of themselves and make a living for themselves; they were all brought up in the household by the old man and his wife.

Some time ago I was city comptroller. I am now president of the Firemen's Insurance Company; am also president of the — Orleans levee board, appointed by the governer of the State, and carry on quite a business myself. I considered that he had no residence in this city at all and that his home was in Waukesha.

Cross-examination by Mr. McCaleb:

I never visited him after he moved on Calhoun street. Jacob and my son went to Father Lambert's school and the Jesuits'. It may have been 1895. Jacob is at Springhill now; my boy is at the Jesuits'. Jacob left the Jesuit school here and went over to Springhill college. They made the change during the fall. It might have been last fall (1896); I can't swear positively whether it was or not.

857 I don't know who lives in the family residence of Joseph Fabacher now, but Louis Fabacher did. He told me that he was going to live in Waukesha during several years and when he first sold the property corner Prytania and Foucher street; he told me he was going to sell all that property and that he was sick. I noticed myself whenever he come here he got sick and went down in health. I noticed that myself, and as soon as he would go to Waukesha and come back he was a new man, and he told me that he had made up his mind to go there and live; that he was going to sell everything he had here and was going there to make his home; he told me that a dozen times; he told me this when he came back from Waukesha or before he would leave and go away again.

The last time he left I said to him, "What are you leaving so early for?" He says, "Well, when I am here I am sick and I feel ill just as soon as I come here, and I want to leave here just as soon as I can." It seems to me that he was in bad health during the latter years. He told me he was there for his health, and that he got along there better than he did here and he intended to go there to live. He bought his furniture and furnished the house that he had built in Waukesha, and he asked me for a good man here to buy his furniture from, and I went with him to Mr. Jaworek. I introduced him to Mr. Jaworek. That was several years ago, three or four years ago, when he was building the house and when he had completed the house, whatever time that was.

I don't remember his first wife. I don't know whether he was married to his last wife and when. He was buried from Calhoun street. He had a large acquaintance here and his whole family lived here.

858 Redirect examination by Mr. Buck:

Fabacher was a man of very strong will, strong mind, and he done what he promised to do or made up his mind to do. He was also stubborn. No one could influence him to do anything that was against his judgement. I tried that in playing euchre with him. I tried it several times. I know I never could get him to do anything that he didn't want to do, and I was an old friend of his. I never saw him tight in my life; never saw him intoxicated; never saw him that he was not able to do business and talk sense. Drink did not influence him in any way. "I didn't know that he was hard of hearing. I never talked in a very loud tone of voice, and

he always heard me. I never heard him complain about not being able to see or about not being able to read the papers."

I know his wife; she is a regular German, good housekeeper, and seemed to be a good mother. I mean everything seemed to be all right.

Recross-examination by Mr. McCaleb:

He was very devoted to his family. I know he thought the world of Lawrence and Peter and the balance of his boys. He told me he had a lot of good boys. I think he was a very affectionate and good father. I don't know otherwise.

Frank Pace, a witness for the proponent, testified as follows:

Direct examination by Mr. Buck:

I am in the fruit business and have the most prominent fruit stand in the city. I have been born and raised here. I knew the late Joseph Fabacher very well. I am 53 years old. I know that Mr. Fabacher retired from business in the last years of his life, and know about his restaurant on Canal and Custom-house
859 streets.

I had a talk with him in reference to his home or residence. I think it was about four years ago. He said that he was going to leave here and make his home in Waukesha on account of his health. I think it was about four or five years ago if I am not mistaken. I used to see the old gentlemen most every day. His conversations were always about his home up there.

He invited me several times to come up there. He told me that it would do me some good. I suffered from dyspepsia all the time, and in fact he was all the time after me to come up there and stay with him for a while. He told me about his house and establishments up there. I saw him last winter before his sickness and death. I would tease him about coming down here, and he would say, "Well, I have to come here on account of mama; she wants to see the children." He always called his wife mama and said that he came down here to see the children. He talked about going back to stay there.

He wanted me to get him some grapevines and fruit trees for his place.

Cross-examination by Mr. McCaleb:

I had this conversation with him before he got sick last time; that is about three or four months ago—a little before he died; about a month before. He said he was going back there very soon and wanted me to get some grapevines, and then mentioned the variety of grapes that he wanted.

I could not tell how many winters he spent here since
860 1894, but I saw him here off and on. I could not say positively whether he was here in 1895 and 1896 from October to

May. I used to see him every day. I know that he was here from about November 20, 1896, up to the time of his death, on the 3rd of March, 1897, and he was here during the winter. I never visited his house.

Redirect examination by Mr. BUCK:

I don't think he was considered a resident of the city of New Orleans by those who knew him; he lived at Waukesha. I attended the funeral. I knew he was dead from seeing the notice in the paper. I suppose these notices emanated from the family, but I don't know.

JOSEPH SCHUTTEN, a witness for the proponent, who testified as follows:

Direct examination by Mr. BUCK:

I reside here in the city of New Orleans and have been born and raised here. I am 42 years of age. I am in the wholesale grocery business since 1890. I knew Mr. Joseph Fabacher well. I have known him since 1867, when they went off into the country; his eldest son was a schoolmate of mine. I had some talk with him regarding his moving to Waukesha.

The last time he spoke to me was, I think, the day that he took sick. I was taking lunch in the restaurant and he came up and spoke to me. He asked me in regard to business and in regard to rice, and he told me at the time that he was ready to go to Waukesha. He said he was going there for his health and because he liked it there as a home, and invited me, if ever I came up there, that I should see him; that he would give me all the milk
861 and all the fruit and all the good water to drink that I wanted.

He spoke of Waukesha as his home. The impression that he made upon me was that he had moved there already; the only thing that brought him down here was to see his children, and his wife wanted to come down here on account of the family.

He was making preparations to go because he made preparations in regard to rice; he wanted to take some rice along. This conversation took place on the day that he took sick. He was very well known here in the city; in fact, almost everybody knew him. It was generally understood here that he changed his residence on account of his health, because he liked it up there better than he did here, because it was too hot for him down here.

My impression was that his home was at Waukesha.

Cross-examination by Mr. MCCALEB:

I saw his funeral notice in the paper. I know he had lived here all the time up to until about five years ago. I don't know as any one held his power of attorney. I think he held it himself. When he was gone, I think it was either Lawrence or Albert who really attended to his business while he was away.

His oldest son, Joseph, I think, is about 38 or 40. I know of his children by the first wife. I knew one of them, Mrs. Troye; I think Mrs. Thormann. He was greatly attached to his children and wife. While he was in business Lawrence Fabacher was his favorite son, but perhaps a little later it was Albert. I could not say; it was my belief.

862 Redirect examination by Mr. BUCK:

He would not allow any of his family to influence him. I went there on business several times, and he would not do anything at all except in his own way of doing things. Although attached to his family, he was a very strict father; he was a very strict man in his family affairs, following his own way about it.

I think Lawrence is about 36 years old, Albert about 34; I think Joe is about 41; Louis, I think, is about 30. I know the younger children. I think he had some of his children up in Waukesha, going to school there. I think so because we had a conversation one time in the evening there, and I think he told me that they were up there. His wife was there. I was under the impression that he had one of his children there.

There is nothing the matter with Fabacher's eyesight. I did not know that he was hard of hearing.

THOMAS NICHOLSON, a witness for the proponents, testified as follows:

Direct examination by Mr. BUCK:

I reside in New Orleans and have been a resident off and on seven years. I am a contractor, erecting heavy buildings—large buildings. I have erected the Illinois Central depot, Tulane College building, the Hennen and St. Charles buildings. I was the chief contractor in most of those constructions.

I knew the late Joseph Fabacher. The last time that I saw him he was well enough to be in the restaurant. I could not tell you when. I saw him a few days before the time he was taken
863 sick last winter. We had several conversations regarding his northern residence. The time more particularly was 1895 and 1896, in the winter season of those two times, in Fabacher's restaurant. Those conversations were regarding how he liked Waukesha as a place of residence, and in our conversation he stated to me that he intended to stay the winter as well as the summer there. We often canvassed the respective merits of the North and South as places of residence, and he expressed his preference for Waukesha, and he said that he intended to stay there winters as well as summers. I asked him why he didn't stay the winter up there as he said he would do. He replied that he saw the snow there, anyway, and that he had sleigh-riding up there, and so on, enjoying himself in the winter until he came down.

It was late that year when he came down. That was all he said to me regarding his residence in Waukesha, except that he was ex-

tolling the health-giving qualities of the place, and what a great advantage it was for a man come to his time of life to locate in such a place, as it would prolong his life.

I came here from Chicago, and still retain some business there. Part of the time I am North and part South.

Cross-examination by Mr. McCALEB:

It was in the spring of 1895 that Joseph Fabacher told me he intended to stay in Waukesha winters as well as summers. I don't know when he left in the spring; he returned here late in the fall. It must have been about the first of December that time. I came here about the 27th day of November, 1896, myself, and between that and Christmas time I met him in the restaurant. He remained here up to the time of his death.

864 I used to see him occasionally there in the restaurant; he used to be in the restaurant. The last year he wasn't there as frequently as in former years. Former years he was there nearly every day.

FRITZ JAHNCKE, a witness for the proponent, testified as follows:

Direct examination by Mr. DART:

I am a paver and contractor and am 50 years of age. I have been in the business since 1871. I knew the late Joseph Fabacher very well and for quite a while. I knew he lived in Waukesha because I was up there and paid him a visit last year. It was in the middle of the summer. S. W. Brown was with me, the late city engineer. I was in Milwaukee and took a trip there to see Mr. Fabacher, since we were good, intimate friends. I had some talk with him regarding his residence in Waukesha, because I drove up to his house and he showed me all through it.

His place was an elegant place. I complimented him upon that, and he told me that there was two lots adjoining. He wanted me to buy them, and naturally he said that that was his home. He didn't want to go back to New Orleans unless his ma wants to come down here sometimes to see the children in the winter time, but otherwise he would never come back here.

Ma was his wife. He repeated this to me. I staid there about two or three hours. He said that was his home there for all time to come unless it was perhaps on a visit; otherwise he would never come back to New Orleans.

He had everything he could think of right up there, and, by the way, he told me also that he had a tomb here in the cemetery

865 that I should look after and fix it up in style; that that was about the only thing he had left here in New Orleans, and he said he wanted to get that fixed up in shape. That is the line of my business, doing that sort of work.

He had a great big place there—stables for horses and carriage—everything a man could think of. It didn't appear like a summer home; I would be glad to have a winter home like that. I keep a

summer home myself. The appearance was finished about as nice as any residence a man could want and, in fact, a residence for all times to live in—a permanent home.

The finishings of the doors were such as any man would want for a winter residence; in fact, I asked about them—the way the doors were grooved into each other. I says, "What is the matter with this here? If this is for summer, it seems that this is nonsense." "Well," he says, "I want this for the winter." He says, "The doors have got to fit very close." There they had sliding doors, if I am not mistaken, and they fitted very close together, and I remarked about that.

Cross-examination by Mr. McCALEB:

I don't know that it snows up there in that country in May and June. I never lived in Wisconsin; it was my first visit there. There might have been screen doors in the house, but I don't remember. He didn't want to sell the tomb; that was a family tomb.

I visited him often here in New Orleans up at his house before he sold it; afterwards I never visited him. I visited him at his home on Pryt-nia street; he wanted to sell it. I was doing some work there for him. He was buried from Calhoun street. I don't know whether that was his last residence. It seems to me he lived there.

866 Mr. Dart spoke to me about my testimony being wanted in this case; I believe Mr. Peter Fabacher also spoke to me. After meeting him — Waukesha last summer I met Joseph Fabacher in the restaurant here. I was surprised to see him back.

I knew he had fallen out of a hammock and got badly hurt up there last summer. He told me so. He showed me the spot where he fell on a stump. I don't know that he was a heavy drinker; he would take his toddy like I would myself or like anybody else would. He didn't say anything to me about being under the influence of liquor when he fell out of the hammock. He showed me the spot there; he said he would — have hurt himself if it wasn't for the stump. I don't think the hammock was even two feet from the ground; a heavy man like that, if he fell even the least bit, an old man like that, would hurt himself.

Mr. Fabacher was 72 years old. He was a little lame in the back after that fall. The last time I saw him before his death he was in good condition. I met him in the restaurant, and he came over and spoke to me about his tomb, saying that I didn't attend to that. I made an appointment with him to meet him at the tomb. He was very solicitous about that tomb; he wanted to get that fixed up before he would go away, because he said he would not come back.

I went up and met him there in the morning. I didn't want that work. I asked one of the men how much he would charge to fix that tomb. He told me, and I said, "Go ahead and do it." Fabacher was standing alongside of me, and I said, "I think that

is reasonable, if he will do a good job, and I will see that he
867 does do a good job," and he said, "All right; go ahead and fix it up," and that was the last time I saw him.

The members of the Fabacher family at Waukesha were Mrs. Fabacher and two sons; one of them was a young man, Jacob; I don't know the other boy. He drove me about the place and showed me the springs afterwards. I don't know his name. I think his daughter was there. I don't remember his granddaughter, Miss Gress.

I was there only three hours and I did not have time to talk much family affairs. Fabacher did not say anything about being buried in the family tomb. He told me all along that he was going to sell the property—that is, some three or four years ago. First he wanted to rent it, and could not rent it, it seems, and then he wanted to sell it; he didn't tell me why he was going to sell it.

HENRY WELLMAN, a witness for the proponent, testified as follows:

Redirect examination by Mr. DART:

I am fifty-two years old and am a manufacturer. I am president of the Teutonia bank and also president of the Mutual Loan and Building Company. I have known Joseph Fabacher since 1872 or 1873.

He left New Orleans about three years ago, when he told us he had left for Waukesha. He was then going to Waukesha, and he followed it up every year until a year or two ago, when he
868 said he had built himself a house there and was going to make a permanent home there in Waukesha. He told me he was going to make Waukesha his permanent home.

I think it *is* in the spring two years ago when he left with his horses and carriages. I heard him make a contract with the railroad people to take his horses and carriages up to live there for good. I have seen him in New Orleans since.

I have seen him a little while before he died, in the winter, about two or three months ago. When I seen him the first time when he arrived here I says, "Well, what is the matter? You people can't stand it in the cold climate. You have to come back to us, haven't you?" He kind of smiled and said, "Yes; it was a little bit cold there for a couple of months, but I am going away again as soon as the weather will permit."

If I am not mistaken, he said that his wife would like to be down here a couple of months in the winter. I met him almost every day when he was around in the restaurant. I used to go down there every day for lunch with a friend of mine and the old gentleman was in the restaurant, and, of course, he would always come over and speak to *us* and have a little chat.

He said it was the climate which suited him better for his health; that is what I understood him; that was the reason why he went to Waukesha.

Mr. Lawrence Fabacher spoke to me about being a witness in this case, and also Mr. Buck.

Cross-examination by Mr. McCaleb:

Mr. Lawrence Fabacher is a stockholder of the bank of which I am president and depositor. Mr. Jos. Fabacher, the deceased, did not have an account with our bank, nor did he have a box
869 therein. I think I saw Joseph Fabacher here in the winter of 1896. I think Joseph Fabacher went to Waukesha in the spring of 1896, during the latter part of April or the first part of May. He returned during the winter. I don't know if it was December or January. I went to the funeral. I saw the death notice in the papers. I know there was a notice in the Times-Democrat. I didn't pay any attention to his residentship at all. I was not surprised that he was buried here in New Orleans, when he was stationed here. I twitted him that he came back to New Orleans, and that it was too cold for old people up there. He invited me several times to come up there, and I never had a chance to go to Waukesha.

Jeff. C. Wenck, a witness produced on behalf of the proponents, who testified as follows, being first examined on his *voir dire* by counsel for contestant, Mr. E. H. McCaleb:

I am a notary public in this city and passed a number of acts in which Joseph Fabacher appeared as vendor in the winter, spring, and summer of 1895. I do not know the dates.

Direct examination by Mr. Buck:

I passed the acts of sale of his property in 1895. I have the originals on file. At that time Mr. Fabacher made some declarations as to his future intentions in regard to his residence. He stated that he was going to sell all his possessions in the city in order to remove to Waukesha, where he had already a home, and he was going to *re*side there in the future; reside there permanently; he was very explicit about that.

I know him personally. I knew about his relations and
870 affairs in a general way, and had this conversation with him when the acts were being passed. I think my clerks were present. I do not know whether they heard the conversation.

I was born in this city. My father lives here. He is eighty-one years of age, and has also been an old friend and companion of Mr. Fabacher. I have known Mr. Fabacher for about ten years. At this time I think his eyesight was good. His hearing, I think, was good also. He had a habit of asking a repetition of a question, as a rule. I don't think it was on account of a defect of hearing, though I am not in a position to say. I did have to talk to him a little louder than usual.

He used ordinary care in matters of business, I guess, the same as any other man in business of that kind. He wanted to under-

stand everything before he did anything. I had two or three conversations with him wherein he referred to his residence, in which he made similar statements.

R. A. CORBIN, a witness for the proponent, who testified as follows:

Direct examination by Mr. BUCK:

I reside at Hammond, Louisiana. I have spent the last five or six months in New Orleans. I have been here twenty-eight years. I was fifty-six years of age last February. I have known Mr. Fabacher for about fifteen or sixteen years. I have been trading in mules and horses here for a number of years on Baronne street. I have known Mr. Fabacher to go to Waukesha for the last five or six years. I know only what he told me. About two years ago I was here and met the old gentleman. He says, "You are a
871 great trading fellow. Now, I have got a trade for you." He says, "I want to sell you my house, corner of Prytania." I have been up there and looked it over once or twice. He says, "I am going to Waukesha to live. I am going to make it my permanent home and am going to sell my place." I said, "You are not in earnest about going away from here?" "Oh, yes," he said, "I am going to Waukesha to make it my home. The climate suits me. I am so pleased with the climate. It has done me so much good during my stay there that I am going there to live. I will come back here to see you all a little while in the winter; spend a month or two with you, but I am going to make Waukesha my home."

That was about two years ago. I think in the spring of 1895. I remember the old gentleman going up. I was down here a few days before he went away. He says, "I am going away on a certain date." I says, "Mr. Fabacher, I will meet you at Hammond and give you a nice case of strawberries to take along," and I met him at Hammond and did give him a case of nice berries. I met him on the train, and his family was on the train. He says, "Goodbye. I am gone from Louisiana; come and spend some time North with me this summer." He says, "I will let you have my house." That was the time he was making the move.

He had with him Mrs. Fabacher and a little boy. Hammond is fifty-two miles from New Orleans; just a place where all trains stop for lunch.

I know that he sold the house on Prytania street. I came
872 down a few days after he had sold it. It was a very desirable and a very pretty one—a very nice place. The buildings occupy about three lots—probably four. He had a nice garden and fruit trees. He was very much pleased with his peach trees growing there; a desirable home, indeed.

I saw him in the city last winter before his death. I met Mr. Fabacher here, probably a week or two before his sickness. I was glad to see him, and asked him how he had been, how long he had

been down, and he said he had just come down to spend a few weeks. I think he did probably say that his family had come down to spend a few weeks or a few months.

Cross-examination by Mr. McCaleb:

I had some business dealings with Mr. Lawrence Fabacher. I didn't have directly, but my son had some business with him—sold milk. Mr. Peter Fabacher spoke to me about giving testimony in this case.

Christian Shopp, a witness for the proponent, who testified as follows:

I have been a citizen of New Orleans for eight years. I am past seventy-two years of age. I knew the late Mr. Joseph Fabacher very well. I know when he sold his property and when he moved away too. He went to Waukesha.

He told me some time before that, while up there myself, when he bought one lot and sold it again and bought another one, and on this one he built. I was up at Waukesha some one time. He told me that he had moved up there with the intention of staying there.

Cross-examination by Mr. McCaleb:

873 My wife and children are living here in New Orleans. I have known Joseph Fabacher about forty years. I knew him pretty soon after I came here. I came here in 1849. He came here before me. I didn't know his first wife, nor do I know the children of his first wife. I visited him on Calhoun street. That is where he died. I was there the last time, I believe, in January. I was there several times before he went away last year, 1896. I met his wife there. I don't know if I met anybody else. I didn't remain very long. His house and residence there was fixed up and furnished comfortably. It was a nice house. I don't know how much it is worth. I didn't build one like that yet.

After he returned in the fall of 1896, I believe, I have been there once, at his residence on Calhoun street. I met his wife there and can't recollect anybody else.

I don't exactly know when he left here in the spring of 1896. I saw him late before he went up, but I could not tell you exactly when. When he went away from here he always came back and spent the winter. He came here in the fall and would go away in the spring.

I saw his funeral notice in the newspaper, but I didn't read it. Mr. Buck asked me if I could not come here to testify. I was acquainted with him, but, of course, his family were not at home. His children, most of them, were out.

It is longer than three or four years ago that I saw him at Waukesha, and I didn't see the house in Waukesha after it was
874 built. Sometimes Fabacher was hard of hearing. You had to talk pretty loud to him. His eyesight, I believe, was better than mine.

HENRY HALLER, a witness for the proponent, who testified as follows:

I am sixty-two years of age. I have lived in New Orleans since 1852. I am a merchant and manufacturer; am in the hardware line—stoves and hardware manufacture—and tinware; rather a large concern.

I knew Joseph Fabacher very well. I have known him since the war. I was acquainted with him and associated with him. The only time I ever knew he left here — was going to Waukesha. I was at the hotel myself, at the National hotel, in Waukesha, when he wrote me a letter to my headquarters there. I forgot the year it was; about six years ago. I have been going to Waukesha for sixteen or seventeen summers in succession, except last season.

He boarded first at the hotel. The end of it was that somebody built a house up there. I believe Mr. Lawrence was up there, if I am not mistaken. He built a house up on the hill and he lived there, and that is all I know—that is, Mr. Joseph Fabacher.

I was in that house at Waukesha very frequently, and the house was furnished in good style for any person to live in all the year round; a home. He had a heater in the basement; hot-air pipes leading to every room and in through the hall. I know they were in the rooms.

875 The house was built to answer the purposes all the year around. He told me he was going to live up there permanently; that is the reason he built the place. He said he had even had the gas and water brought there—he and Mr. Enos, who lives next to him there. He paid for it with the understanding that they were to be paid back as soon as other people up there would take advantage of that.

The house up there was a permanent one, I think. If I had been fixed up there like that I wouldn't have to come down here myself. He had the prettiest place in Waukesha. He was out of business. He told me that he had sold his property in New Orleans. He told me he had sold every stitch.

He came back here occasionally at the request of his wife, I think, within the last couple of years. He didn't give me any reason, but he said he wanted to stay up there and live there; that he had his house arranged for that purpose. I met him when he came to New Orleans for the winter, but very seldom, though. I met him at Mr. Fabacher's restaurant some time.

Cross-examination by Mr. MCCALEB:

My wife attended his funeral; I had not time or else I would. I saw the publication of his death in the New Orleans Picayune. His death was well known all over the city, and I saw it probably when I read the paper, but that I took any particular notice of it—I knew it before it appeared in there because I heard it from the Touro infirmary.

I knew that he had been a resident of New Orleans for fifty-three years, I think. I don't know exactly, but I knew him right after the war. As I said, he kept a house on Custom-house street.

876 I didn't know that he was registered at the Touro infirmary as a resident of New Orleans for forty-two years and as residing at No. 1716 Calhoun street, in this city.

I was accustomed to visit him at his residence. I don't know anything about his family affairs. Our relations here were not of an intimate character. I very seldom seen him, but in Waukesha we were very intimate; saw each other every day; played cards together.

He had a crescent over his house in Waukesha. It did not indicate that he was from the Crescent City. He had done that for fun. I did not know that he was a heavy drinker. He took a drink occasionally, and I saw him under the influence of liquor very seldom, and how often I could not tell. He was all right in the daytime. I don't know what he did at night. We played cards together many a time and I always saw him all O K.

His hearing was all right. He could hear playing cards very well. He may have been a little off on that thing; I don't know. He spoke loud enough to understand him, but not extra loud that I know unless he got mad.

I have not seen Mr. Fabacher since 1895, I don't think; that is two years ago. I have not seen him in Waukesha since that time, but I saw him very often here in Fabacher's restaurant. I think I saw him in the restaurant in the winter of 1895 and spring of 1896. I am pretty sure that I saw him again in 1896 and 1897.

Mr. Lawrence Fabacher spoke to me about giving testimony in this case. He asked me to come down. I was not influenced
877 in my testimony by what Mr. Lawrence Fabacher said. I am only giving facts, that's all.

GEORGE WEGMANN, a witness for the proponents, testified as follows:

Direct examination by Mr. BUCK:

I have lived in the city of New Orleans about twenty-one years. I knew the late Joseph Fabacher. I am distantly connected with him. Mr. Fabacher was my uncle—my mother's brother. I met him often in the city as long as he was in town. He was not in town the last few days before his death; from what I know, he was in Waukesha with his family. I know he was in Waukesha from what he told me. He bought a home in Waukesha; that is all I know. He told me the day before he went to the hospital, down at Hufft's, as it just happened I met him there and I wished him a happy New Year's.

We sat down together and had a little drink and he spoke about his home, and he said it was the last time he would come back here. He was sorry he had come down. He said he would never come down if it had not been for his wife, and he says if ever he got back again he would never come back any more. He told me that he had good health North, and whenever he went back again he would never come down here any more; and he had a letter from a cousin of mine in Europe and a cousin of him also that he had

sent out some money for the children making their first communion, and I had an answer back that he had received the money, and he read the letter without specs; and I says, "Uncle, what's this, you can read a letter without specs;" and he says, "Yes." My
878 uncle was in the seventies. My ma was seventy-six when she died. He was the youngest of all the children. He was otherwise a strong and hearty man. Two days after that I heard he was sick.

Cross-examination by Mr. McCaleb:

I am in the grocery and bar-room business on Ninth and Chippewa street. Mr. Lawrence Fabacher spoke to me about my testimony some time ago. I told Lawrence Fabacher all the testimony as I have given here today.

We never interfered with one another in business. He went off and came back, and went off and came back. I might have seen him in March, 1896. I may have seen him once, but very seldom I did so. I don't think he staid here six or seven months in the year. I know he didn't stay here that long, because when he went away he went away early in the spring and staid up there all summer until late in the fall, so he could not stay here six or seven months in New Orleans and be there in Waukesha over eight months; that could not be. I don't know when he came and when he went.

I know that he had a family tomb here. I knew that a long time ago. I knew he said—and he made the remark once—that if he died he didn't care where they were going to bury him. They might just as well bury him up there or bring him here. He said this on the Monday before he went to the Touro infirmary and in the presence of me and my brother at Mr. Fritz Hufft's, between twelve and one—a little after twelve on a Monday.

He was a religious man, but not very strict. He was a
879 man that did what he pleased. He was a man that knew what he wanted and never asked any odds of anybody. I certainly know that Catholics desire to be buried in consecrated ground. I know that much. I am a Catholic.

I have no business relations with Lawrence Fabacher. I knew Joseph Fabacher's first wife and knew her children. I do not remember the date her son died, and I never bothered about it.

I knew when Mr. Fabacher was married to his last wife. They were married in 1874. I heard of his being divorced from his first wife. I heard they got divorced, and she was here in New Orleans. She asked for a divorce herself.

I believe I am pretty near forty-nine years of age. I was born in 1848, in November. The Fabachers were up in the country when I came to this country—parish of St. Landry.

The first I ever knew the boys was about twelve or thirteen years ago; something like that; I am not sure; I just calculate by the year; I never interfered with those people. We never had anything to do with one another or bothered about one another.

I don't know whether he had a residence on Calhoun street or

not. I know we buried him out of there, but I don't know whether it was his house or not. I was there at the funeral and was there the night of the wake. The funeral went from the residence down to the Jesuits' church, out to St. Joseph's grave-yard, to his tomb. He was buried in his family tomb.

880 I was not accustomed to visit his family at all. I met him very seldom at the restaurant, because I go there very seldom. I go down, do my business, and go home. I meet him at Hufft's—I told you before—maybe once or twice in the year or in two years.

I know Mrs. Antoinetta Thorman, born of Fabacher. I knew her first husband, Troy—that is, I knew the name. I did see him once or twice.

I saw Fabacher's funeral notice in the German paper. This funeral notice come from the family, asking everybody to come to their relative's funeral. There was something said just after the coffin was closed. There was prayers said there. Lawrence Fabacher said, "Father, I forgive you;" and the balance of the brothers and sisters repeated it and said, "We all forgive you."

I think it was nothing out of the way. I think it was nothing more than nice. They said, "Let us all forgive him, like a good child would do his father and mother when they are dead, to forgive them before they are gone."

I don't know who his agent or representative was to attend to his affairs here. I don't think he trusted anybody but himself; I could not tell you.

PETER WEGMANN, a witness for the proponents, testified as follows:

Direct examination by Mr. BUCK:

I am a brother of George Wegmann, who was here a moment ago. I knew the late Joseph Fabacher. I am older than my brother.

881 I don't know how long it is, but it was about a few days before the old man was sick we were down on business, and *and* I passed by Mr. Fritz Hufft's, and old man Fabacher came in, and we asked him to take a drink, and he refused to drink. He said he had a drink at the bar and he wouldn't drink, and he sat down. There was a good deal of people around, but one after the other dropped out. I says, "Uncle"—he was my uncle—I says, "When are you going to leave the city?" and he says he thinks in a few weeks that he would leave the city; and he says, "I am going to leave here, and I will never come back any more. I am going to stay up in Waukesha, in my home that I have made there." I said, "Well, uncle, you won't do that. You have got all your children down here and boys." He says, "I am going up to stay. You haven't got any idea how I am fixed up there." He said, "I built a house for me to live and die —." He says, "I fixed it. I have got water all over the house, bath-rooms all around. I just built it according to comfort for me and my family." And he says, "I have got two or three houses up there. I have got a livery stable. Last

year I put it in the house, and the man that attended to it, that I paid, sometimes he would feed the horses and sometimes not, and it cost me just as much as this time when I put it in the livery stable, and when I go up there everything is all right. It is the nicest country you ever saw. They have everything growing; rich country." He was going to stay there. He was never coming back to New Orleans any more. That is what he told me. That was a few days or a day or two before he got sick.

Well, now, there was my brother—there was a few other people there, but we asked him to take a drink and he refused, and I think some of them got up, because me and my uncle were not big
882 friends; me and him had some difficulty about business. I bought a grocery store from him before—that was in the long, long years ago—and we had some settlement to make.

I refused to pay him rent. I owed him *him* $300.00 and he wanted to make me move off, and went down to Lawyer Wenck to give me notice to move. Fabacher was a very strict business man and he was a hard man. The only thing I got ahead of him, and he could not make me move because I offered the money to his agent. We were always in the family, and when he came again we were talking together.

If I asked him anything he would tell me. I never heard anything of his moving away from here before this conversation. I never knew anything of his selling his property. I only saw it in the paper that it was sold at auction. I met him very seldom. I met him when he came from the country on Canal street. I says, "Hello, uncle," and we shook hands together. He says, "I have just come. I wouldn't come down, but they were bothering me to come down, and I won't come down any more;" that is what he told me a day or two before he got down sick. He said his wife bothered him; that she wants him to come down here again on account of the boys, but that he didn't care to come down. He says he has got such a nice home that he doesn't care to come down. Fritz Hufft keeps his saloon on Royal street near Canal. We sat down in that place—we were sitting down at the table. I asked him to take a drink and he refused to do so. He told me he had received a letter from his brother in Germany, the only
883 brother he had living. No; he didn't show it to me, but he says that he wants his brother to come here and live up there with him; he might live many years longer, but the old man was too old. This is the last time I saw him. I never spoke to him any more.

Cross-examination by Mr. McCaleb:

He never said anything about dying and being buried that day; never told me anything about that. I never heard anything of that kind. I knew his first wife. I knew the children by his first wife. I first got acquainted with the old man in Europe, and I got acquainted with his children in 1864. I don't think Mr. Lawrence was born in 1864.

I am in the grocery business—bar-room and grocery—corner of St. Thomas and Felicity. There is nobody spoke to me about giving testimony in this case.

Redirect examination by Mr. BUCK:

I don't remember in that conversation anything about Mr. Fabacher saying about dying; he never did tell me about that. I never heard anything about it.

JOHN MALONE, a witness for the proponents, who testified as follows:

I am a contractor and painter. I have been in business for myself about seven years. I knew Joseph Fabacher well. I know where he lived for a good many years in town here. He lived on Prytania street, but the last couple of winters he has been living on Calhoun street. Last December he told me he was living in Waukesha, Wisconsin.

884 I saw him and he told me that he was going away and wasn't coming back any more. I met him in the restaurant a couple of days after he came back and I was talking to him and I says, "Well, Uncle Joe, I see you are back again. I thought you weren't coming back any more." "Well," he says, "I am back again. I had to come back on account of the old lady; she would not stay there this winter with me." I says, "You ought to have come back and voted here." He says, "I don't vote here any more; I am a citizen of Wisconsin." He told me that when he would go back he would not come back any more.

I suppose it was four or five years ago, when his son was building some houses here in town, and he told me he was going to sell all his property and was going to live in Wisconsin for the balance of his life and in Waukesha; that he would not live here any more; he told me that one day on the buildings; I met him there.

JOSEPH D. TAYLOR, a witness for the proponents, testified as follows:

Direct examination by Mr. BUCK:

I am a resident of this city and have lived here nearly all my life. I am 54 years of age. I knew the late Mr. Fabacher. I am a notary public by profession. I understood that he was living in Waukesha. I know where he lived here on Prytania street, corner of Aline.

I have seen some sales recorded; saw the advertisements concerning sales of his properties about two or three years ago.

885 I got my knowledge as to his residence in Waukesha from his telling me so; he told me here in the city of New Orleans in two or three conversations. About the time that he was selling his property, when it was advertised at public auction, I asked him why he was selling out. He said that he intended to live in Waukesha; that his health was always good there and that it wasn't good here.

I didn't know that he had any business of his own within the last few years that he lived in the city. The restaurant on Customhouse street was carried on for two or three years by Mr. Lawrence Fabacher.

He talked to me about his residence in Waukesha about a week before he died in this city; I was taking lunch in Mr. Fabacher's restaurant; at least I went to see Mr. Lawrence Fabacher and they were taking lunch and they invited me to take lunch with them. There was very little conversation in regard to that, except that he said he didn't feel well and that he never felt well when he was here; that he always felt better in Waukesha; it was about a week before he died; he didn't say anything at that time about returning to Waukesha.

Cross-examination by Mr. McCaleb:

I think Mr. Wenck attended to all his business here. I was the notary of Mr. Lawrence Fabacher—that is to say, I had a great deal of business for him. Mr. Lawrence Fabacher asked me if I would testify if I was called.

Redirect examination by Mr. Buck:

I regarded Mr. Joseph Fabacher as a man who didn't like
886 anybody to influence or control him much; he had his own ways about things. Concerning his hearing, I believe he had some little impediment, but I don't think it amounted to much. I didn't know much of him during the two or three years prior to his death; only when I met him by chance occasionally. When I met him at all it was almost always in the restaurant of Mr. Lawrence Fabacher.

Henry D. Hart, a witness for the proponent, testified as follows:

Direct examination by Mr. Buck:

I am a resident of New Orleans and have lived here all my life, except when I am traveling around once in a while. I am executor of the estate of S. L. James's brother-in-law, and that business is lessee for the Louisiana State penitentiary and contracting, plantation work, one way or another.

I lived next door to them—that is, Joseph Fabacher—on Prytania and Aline streets. I knew him very well. He had a beautiful home. I knew nothing of his selling out that home. I did see the advertisement in the paper. I believe it was put up for sale and not sold. I don't know whether it was afterwards sold or not. I had moved away in the meantime.

At the time of his death he was living up near where I am living now. I know of his moving away to Waukesha. I met him in Chicago the year of the World's Fair. His wife, I believe, little Jakey, and I believe his son here (pointing to Mr. Lawrence Fabacher) were with him, and he said that he had built himself a nice

887 home up there. His health was very much improved; that he was going to move everything up there. I was asking him about a little horse that Jakey had. He said, "I have brought him all the way up there." He says, "I am well fixed. It has improved my health." I saw that without asking.

Afterwards here in the city he has repeated it once or twice. That was in the hotel in Chicago during the World's Fair. In the conversation here in the city he told me the same thing and one thing or another. He said he was going back there again and one thing or another; had just come down. He said he was going to live there; had built a house, a nice house, and his health was very much improved by it. It was merely an ordinary conversation; that is all, meeting him in the hotel and having a conversation with him.

From the way he spoke to me, he resided up around Waukesha, some place, two years prior to his death. I know of his leaving Calhoun street. He had a house there, but he spent the winters in—he would come down and spend a little while here. I believe he come down in the fall and would go away in the spring. I don't know of his coming down in the fall of 1895 and of his going away in the spring of 1896. I merely saw him here. I simply saw him a short time before his death, stating that he was going back there very soon. He was then living on Calhoun street. I think he was buried from that place. I was absent when he was buried.

SIMON BLOCK, a witness for the proponents, testified as follows:

Direct examination by Mr. DART:

888 I knew Joseph Fabacher very well; knew him intimately for many years. I knew him before he went out to Opelousas, and he kept a store in Opelousas and afterwards he came here. I have known him for a long number of years. I met him in Waukesha; that must have been three or four years ago. He said something to me about being there. I asked him since when he was there. He says, "I live here." Well, of course, I knew him well, and my wife was with me, and he spoke to us and said, "I am coming out to get you at the hotel and show you the house," and he came with his carriage the second day after and took us out to his house and showed us around the house and told us it was his home now—future home; that he felt better there, and he even tried to make me buy a lot next to him that I should come there. I said, "No. I reside in Chicago."

He says he didn't care about coming to New Orleans. "The old woman," he says, "gets homesick for the children and occasionally we go down." We spent several hours at the house; he showed us around and showed us the house, and we called on him again.

The house was finely furnished—a good, nice house. He even had inside shutters built, which he did not have finished then, and he showed me how he was going to finish it—finer. The house was finely furnished, but it was going to have inside shutters out in

It was a regular house as they have in that country—a house for winter and summer.

I saw him afterwards, when he come to New Orleans on his trips. He told me he was going back as soon as I met him here. I generally go back to Chicago soon; but he says, "I leave sooner than you do;" that is all. He was fixed there in a home, well fixed, as well as any man could wish to be, from the basement to the
889 top of the house; the rooms and everything nicely fixed. He told me that was his home. I don't know what the conversation was exactly, but he said that that was his home. He says, "I feel better," and that is where he likes to stay. He said that he was going to stay there.

I am out of business. I am planting in Louisiana. I used to be in the cotton business. I am sixty-six years of age.

Cross-examination by Mr. McCaleb:

My daughter is married and lives in Chicago. I got a home next to her, which I expect to make a home. I am not a citizen of the United States; I am a subject of Germany. This conversation was three or four years ago, in Chicago; since I have seen him here in New Orleans, once to my knowledge, and that was about a year ago. I don't know when he come or when he went away from here.

H. H. Hodgson, a witness for the proponents, who testified as follows:

Direct examination by Mr. Buck:

I am a dealer in real estate. I remember the late Joseph Fabacher very well. We did business for him in real estate. We sold some real estate for him and attended to his business for him for some years. We sold it for him about three or four years ago; we sold it at auction.

The property that we had charge of was on the corner of Prytania and Aline street-; that was his residence. He lived there opposite the Touro infirmary, and it was finally sold. He made some statements about why he was selling and what his intentions
890 were in that regard. He stated that he was about to take up his residence in Milwaukee somewhere; I think Waukesha or Oconomowoc; some place there; that the climate did not agree with him here, and that he was about to change his residence and become a resident of the State of Wisconsin. He was in the office several times. He was anxious to dispose of the property, so that he could leave. He stated that he expected to dispose of all his property here and make a permanent residence in the North. He said he had a residence in the North—building or had a residence already purchased in Milwaukee. I remember father stating that he would find it very congenial up there, because they had both been there.

Prior to his death I believe I saw him once. I am not positive. He said he was selling out here to go there to live permanently—to make a residence in that State.

Cross-examination Mr. McCALEB:

I believe one of his sons bought the residence on Prytania street. I know he rented it. I don't remember which one of them bought it, but I remember I afterwards sold the property and made returns to them for it. I believe it was a son-in-law got it—Mr. Broderick. I rented it for him and sent him the notes and lease and everything. He leased it to Mr. Fischer.

891 *Deposition of Dr. F. Loeber, Taken on Notice of Contestant and Offered on Behalf of the Proponents.*

I am a physician; have been engaged in that profession since 1866. I knew the late Joseph Fabacher; I was acquainted with him since 1884; I was his family physician since that time; I attended him during his last sickness at the Touro infirmary; I just commenced to treat him during his last illness the morning the operation was performed. Dr. Kohlmann saw his condition and telephoned for me, and I went up early in the morning and placed him under the influence of opiates to be operated on.

It was impossible to say what was the cause of his disease. He had umbilical hernia. He resided at Calhoun street, one or two streets back from St. Charles. During the last few years I saw him here in the winter; I saw him in November. I advised him to live in Waukesha, Wisconsin, and told him it was impossible for him to stand the winter there, and he was threatened with pneumonia; he had an attack of it two or three years ago, and that he had to come back here or that he would get sick and die. He came back every winter. It was hard work to prevent him from coming home. His wife and daughter and little boy came back with him. The reason that he wanted to go away from here is that I first sent him up there. He was suffering from a disease of the liver, and I sent him up there to Waukesha, and he liked it so well that he concluded to stay there during the summer and winter. That was his idea, to stay permanently up there, and he built a house with the intention of staying up there; and I told him he would never be
892 able to stand it in the winter. I visited him in his house here on Calhoun street. All the members of his family reside in their own houses here in New Orleans except the two little ones that live with him and their mother. I never knew he had a first wife. His hearing was not so acute; his sight was not so good; had to speak loud to him sometimes; he wore glasses.

Cross-examination:

I formed my acquaintance with Mr. Fabacher in a professional way. I met Mrs. Fabacher by being called up to the house. I attended her son Peter. I got acquainted with both of them before

the exposition here. I got quite well acquainted with Mr. Fabacher. He was a business man. When he made up his mind to do a thing he would do it. He had strong will power and was not easily influenced. He was clever-headed and a practical man. Mrs. Fabacher was a hard-working, industrious woman. She is a example of a mother. She is certainly a very good mother and a very good housewife; she done things for her husband that not many wives would do. I never saw or heard but what her reputation was good in every way, as was also that of her children. They were brought up by their father to be hard-working; they were made to work when they were youngsters.

It was four or five years ago that I advised Mr. Fabacher to go to Waukesha for his health, for the purpose of drinking the water there. As he drank too much liquor here, and the effect was bad for his liver and stomach, and being in contact with his old friends here, I thought it was best for him to go away, and I sent him to Waukesha so he would not be subject to dropsy, and there he spent the summer. It benefited him a great deal. At this time
893 he was living on Prytania street, and it did him so much good that he concluded to stay there, and he sold everything, arranged his business, and he went away with the intention of remaining there permanently. That is what he told me. He said that he liked it better at Waukesha; that it was healthier, and that he was building a house to make him comfortable the rest of his life, and I told him at the time that he could not stand the cold and had to come down. The first winter he had pneumonia, the other winters he was more careful.

"Redirect examination:

The reason why I advised him to go to Waukesha was I advised him first that as his liver was out of order and his intestines were out of order, I told him to go to Waukesha. He had no kidney or bladder trouble; it was chronic catarrh of the stomach, and the waters benefitted him so much, his general health got so much better, that he liked it up there and concluded to stay. He returned here in the winter; he did not want to, but he had to."

Deposition of Lewis Graham, Taken on Notice of the Contestant and Offered by the Proponent.

I reside at 1704 Calhoun street, New Orleans. I have lived there for five years. I have lived in this city 45 years, and am engaged in the printing business. I am a member of the firm of L. Graham & Son, Limited. It is one of the largest, if not the largest, house in the city. I knew the late Joseph Fabacher. I have known him for a number of years, but not intimately until he became a neighbor of mine, which was about two years ago. He resided next door to me, at No. 1716 Calhoun street. His family lived there with him. He kept a cow there.

The funeral was held from his house on Calhoun street. I

thought from his being a man pretty well off that the place he was occupying was his home, and that this was his residence, but I met him early in the spring at the gate, and he came to me and said, "I am going away. I am going home." I said, "Where?" He said, "To my home in Waukesha." I said, "You are going
894 early, are you not?" Said he, "I am not well here; I am always well up there, and I have a nice home, all conveniences, and I think I should go up there." I said, "I am sorry to lose you. What are you going to do with that house?" He said, "I am not going to do anything with that; I am going to sell out my furniture," leading me to believe that I might draw an inference that the house did not belong to him. I had this conversation with him about six weeks before his death. During the time he resided there on Calhoun street he went away very early and he came back very late. He had servants there at the house. When he was away I used to see a watchman going there.

Cross-examination:

The reason that I thought he was going to remain at Waukesha all winter was that when people go away for the summer they usually come back before December. This conversation, in which he spoke of Waukesha as his home, took place some four or five weeks prior to his death. He led me to believe that he was not coming back because he was going to sell out his furniture, and from his expressions I was somewhat impressed with the fact that that was his home; that he was going to live there, as he said he had a nice home and everything comfortable, and that he was living there for some time, and that he was going to stay there; so, from what he said, although he did not tell me positively, I thought he was going to stay there. That seemed to change my idea about his status, his residence, and was somewhat astonished at that time, but a few weeks after his death I learned the exact state of things.

895 Redirect examination:

Previous to the time I had this conversation with him I knew nothing about his residence. I had some doubt that he owned that property, for the reason that I heard Lawrence Fabacher was building it for himself and he was there all the time consulting with the contractor, and I thought he was building that house. It is customary for residents of New Orleans who have means of going away in the summer to rent out their houses or put in a keeper, and go and come at different times. It is customary for those who can afford it to spend their summers away from here, and people in bad health do so.

Recross-examination:

It depends on a man's business whether he leaves early in May and comes back in November. The business season opens here about the first of September; generally about the middle of Octo-

ber the season begins for business. The commercial season commences about the first of September. Very few people leave here in May or June except those going to foreign countries.

Deposition of T. P. Thompson, Taken on Notice of Contestant and Offered by the Proponent.

I reside at 1722 Calhoun street, New Orleans, for about four years. I knew the late Joseph Fabacher; he lived adjoining me. I first knew him about two years ago. This was a family residence I supposed that he lived in; it was furnished. He was there during the winter months. In the year 1895 he came back two or three weeks before Christmas. I know they had a big time. This was in 1895. It was the general impression in the neighbor-
896 hood that Mr. Fabacher was only to stay here a few months in the winter time. I had frequent conversations with the old gentlemen out in front of his place. The impression was that he lived in some place North; in Wisconsin somewhere it was; that is the way I gathered that. When he was building his house close to mine I got a little angry, but I got over it after a while. I approached him and asked him to buy my place and make a garden out of it. He said he did not care for it; that I might see his son; that he had no interests here; that he had some place somewhere in the North that gave him all the amusements that he desired. He took no interest in buying anything. He spoke to me about the comfortable place he had up North, and impressed everybody with that fact. The house seemed locked up. There was a private watchman around there. That watchman is a very familiar figure. I think he was there summer before last.

Cross-examination:

When Mr. Fabacher went away in the spring he went away much earlier than people usually do. From the conversations that I had with Mr. Fabacher I got the impression that his home was in Waukesha.

He would not buy the place I offered to sell him, and that was the impression that it left on me. We would talk about a good many things, but I noticed it seemed to be a hobby with him to speak about his place in Waukesha. I was told, but I do not know from what source it came, that he was to be surprised with a home when he came here; that he did not know there was a house and that there was a surprize in store for him. I took particular notice of the opening of the house, as the neighborhood is a desolate one. I noticed there was a big opening of the house; they kept
897 it going the whole evening. It was my impression that it was a family gathering to welcome the old gentleman down in the winter to see his children. It was a sort of surprise for the old man. It was very cold. I know we don't keep our windows open except in warm weather.

Redirect examination:

Mr. Fabacher appeared to be in no business. It is a fact that when people have no business their time for going away and coming back is not as punctual as those who are engaged in business. My business opens here on the 15th of September, when I must be on the ground, and closes, I should think, about the middle of May or the first of June.

Recross-examination:

If I get away at all it is about the middle of July.

898 EXHIBIT "1."

The following is a copy of the last will and testament of Joseph Fabacher, deceased, offered in evidence by the proponent:

I, Joseph Fabacher, of Waukesha, Wisconsin, being of sound mind and memory, and mindful of the uncertainties of human life, do make, publish and declare this my last will and testament, hereby revoking all former wills, devises and bequests by me made.

First. I will and direct that all my just debts, funeral expenses and expenses of administration be paid out of my personal estate.

Second. I donate and bequeath to my beloved wife, Magdalena, the income of twenty thousand dollars of four per cent. New Orleans city bonds, to be paid to her by the executor or trustee of this, my last will and testament as collected by him,—upon the express condition and provided however, that she, my said wife Magdalena, shall continue to live and cohabit with me as my wife, and care for me in health and sickness until my death, otherwise she shall take nothing hereunder.

Third. I will and bequeath unto my brother Johannes Fabacher of Havre, France, an annuity of two hundred dollars to be paid to him by the executor or trustee of this, my last will and testament, each year so long as he shall live, and at his death, the further sum of one hundred dollars, to provide for his funeral expenses.

Fourth. All the rest, residue and remainder of my property, both real and personal, and of whatsoever name and nature, and wheresoever situated, I give, devise and bequeath to my ten children, viz:—Joseph H. Fabacher, Albert Fabacher, Anthony Fabacher,
899 Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick, *née* Fabacher, Alis Fabacher, Magdalena Fabacher and Jacob A. Fabacher, share and share alike, to each one-tenth part thereof, to have and to hold as their own forever.

Fifth. Upon the death of my said wife, Magdalena, or upon the violation of the provisions for her contained herein, by reason of non-performance on her part of the conditions thereof, I will, devise and bequeath said twenty thousand dollars of four per cent. New Orleans city bonds, to my said ten children, share and share alike, to each one-tenth part thereof.

Sixth. I nominate and appoint Andrew J. Frame of Waukesha,

Wisconsin, sole executor and trustee of this my last will and testament.

In witness whereof, I have hereunto set my hand and seal this 29th day of October, A. D. 1896.

JOSEPH FABACHER. [SEAL.]

Signed, sealed, published, and declared by the said Joseph Fabacher as and for his last will and testament, in presence of us, who at his request, in his presence and in presence of each other, have hereunto subscribed our names as attesting witnesses.

ERNEST MERTON,
Of Waukesha, Wisconsin.
C. W. NEWBURY,
Of Waukesha, Wisconsin.

Filed for probate March 27th, 1897.

M. S. GRISWOLD, *Co. Judge.*

900

EXHIBIT 2.

Offered in evidence by the proponent, the same being a certified copy of the account of Joseph Fabacher with the Waukesha national bank, at Waukesha, Wisconsin.

Date.	Checks.	Deposits.
Oct. 3, '93		1,100.
9	90.	
30	1,001.60	
Nov. 20		800.
25	800.	
Dec. 1		5.
30	13.60	
M'ch 12, '94		1,000.
Ap'l 9		1,001.
May 4	800.	
5	9.20	
June 16		1,000.
19		250.
29	50.	
30	800.	
July 2	25.	
3	190.	
6		100.
7	300.	
10	50.	
12	14.50	
13	150.	
17	100.	
21	100.	
23	250.	
28	50.	
Aug. 3	50.	
6	180.	
7	50.	
10	40.	
11	50.	
18	175.	600.
21	150.	
25	67.75	
27	200.	
Sept. 5	50.	
7	31.20	
7		499.50
7	58.	
19	76.	
20	50.	
22	50.	

901

Date.	Checks.	Deposits.
Dec. 21, '95		
M'ch 23, '96	100.	
May 12		1,150.
21	100.	
June 1	100.	
6	50.	
13	50.	
20	50.	
22	91.40	
27	50.	
July 6	50.	
14	50.	
22	100.	
Sept. 22, '94		
24	335.	
Oct. 3		100.
13	10.	
Jan. 3, '95	17.07	
June 7	15.	
15		4,500.
29	100.	
July 2	39.07	
6	100.	
10	50.	
13	100.	
15	135.	
22	20.87	
23	178.20	
31	100.	
Aug. 10	103.	
12	42.50	
13	150.	
16	57.50	
17	50.	
24	100.	
29	100.	
31	44.45	
Sept. 5	100.	
9	25.	
11	100.	
16	150.	
23	300.	
26	40.	
Oct. 1	142.	
2	50.	
4	195.	
5	30.50	
10	100.	
21	50.	
26	100.	
31	64.	
Nov. 12	100.	
22	50.	
30	100.	
Dec. 4	346.75	
21	24.57	
Aug. 3	100.	
15	100.	
25	100.	
Sept. 8	100.	
21	100.	
Oct. 7	100.	
27	75.	
28	100.	
Nov. 9	100.	
16	103.	
17	200.	
Dec. 15	16.	
Jan. 7, '97	51.21	

EXHIBIT 3.

Offered in evidence by the proponent, the same being a memoranda of agreement between Joseph A. Phiesy and Bros. and Joseph Fabacher for the repair of a double cottage house on Desire and Rampart streets, said house being the home of the contestant, said repairs being made in the sum of five hundred and twenty-five dollars.

EXHIBIT 4.

Offered in evidence by the propo-ent, the same being the original marriage certificate of Mr. Joseph Fabacher (of Waukesha, Wisconsin, now deceased) to Miss Magdalena Frey (of Waukesha, Wisconsin) according to the laws of the State of Wisconsin, said marriage ceremony being performed before Thomas F. Hayden, justice of the peace for Milwaukee county, Wisconsin, upon the 30th day of September, 1895.

"And from which it appears that said marriage was solemnized by said Thos. Hayden according to the laws of the State of Wisconsin."

902 EXHIBIT J J.

Offered in evidence by proponent; is a judgment of separation made by the second district court of New Orleans (a court of competent jurisdiction to render judgments of separation between parties) on the 12th day of November, 1858; that said judgment was a judgment of separation between the parties; also judgment of separation of property between Mary Frey Fabacher, wife of said Joseph Fabacher, and said Joseph Fabacher, and that said Joseph Fabacher *and that said Joseph Fabacher* pay the costs and disbursements in said action, and that afterwards, to wit, on the 26th day of August, 1868, the parties, to wit, Mary Frey Fabacher and said Joseph Fabacher, made an agreement as to the amount of money to be paid to said wife, Mary Frey Fabacher, by which she released him from all further liability, and that said judgment of separation between the parties was duly certified and authenticated according to the act of Congress.

903 The following is a copy of the special verdict:

(Venue and Title.)

We, the jury duly empanneled and sworn in this action to try the issues of fact therein submitted to us on the following questions, do find, determine, and answer such questions as follows:

First question. Was the paper-writing presented for proof, allowance, and probate as the last will and testament of Joseph Fabacher, deceased, executed in conformity with the provisions of the statutes of this State relating to wills?

Answer. "Yes."

Second question. Was the said alleged last will and testament of

said Joseph Fabacher, deceased, his own voluntary act and deed, or was it the result and product of undue influence?

Answer. "The said alleged last will and testament of said deceased was the said deceased's own voluntary act and deed."

Third question. Was the domicil of said Joseph Fabacher at the time of his death, the 3rd day of March, in the year 1897, at the city of Waukesha, county of Waukesha, State of Wisconsin, or was it at the city of New Orleans, State of Louisiana?

Answer. "The domicil of said Joseph Fabacher, deceased, at the time of his death, the 3rd day of March, in the year 1897, was at the city of Waukesha, county of Waukesha, State of Wisconsin."

MORRIS A. PLACE, *Foreman.*

904 The following are the findings of fact and the conclusions of law:

(Venue, Caption, and Title.)

The above-entitled matter being now here at issue in said circuit court upon the appeal by Antoinette Thorman, contestant, from the order and determination of the county court of said county admitting said will to probate, and having now here duly come on for trial and hearing before this court and a jury, and said jury being empanelled at the request of the contestant herein, and the proponent appearing by Messrs. Ryan & Merton, his attorneys, and the contestant appearing by Messrs. Carney, Clasen & Walsh, her attorneys, and D. S. Tullar, Esq., appearing as guardian *ad litem* for the minor children of said deceased interested in said matter, and the testimony on behalf of the respective parties having been taken in open court, and the court having submitted to the jury its special verdict, wherein the said jury found:

First. That the said proposed will of said Joseph Fabacher, deceased, was duly executed according to the laws of the State of Wisconsin;

Second. That said will was not procured by undue influence or fraud, but was made by the said testator freely and voluntarily and of his own free will, and,

Third. That the said deceased at the time of his death was a resident and inhabitant and that his domicil was at the city of Waukesha, county of Waukesha and State of Wisconsin;

And after said special verdict had so been entered of record in this court, and a motion having been duly made by the proponent of said will for judgment of this court admitting the same to
905 probate, and a motion having been made by the contestant that probate thereof be denied, and the court having heard the arguments of respective counsel, and being fully advised in the matter, and independent of said verdict, the court now here makes the following findings of fact and conclusions of law:

Facts.

1. That the said Joseph Fabacher, deceased, duly made and executed as and for his last will and testament the proposed will

offered for probate, and did duly make, execute, and acknowledge the same to be his last will and testament on the 29th day of October, in the year 1896, at the city of Waukesha, county of Waukesha and State of Wisconsin.

2. That said deceased so executed said will of his own free will and accord, without any influence being brought to bear upon him whatever, and that he was not under undue influence at the time of the making and subscribing of said will, and that in the execution of said will said testator duly complied with all the requirements of the statutes of the State of Wisconsin.

3. That at the time of the making of said will and at the time of the death of said deceased he, said Joseph Fabacher, was a resident and inhabitant and his domicile was at the city of Waukesha, in the county of Waukesha, and State of Wisconsin.

That on the 20th day of June, A. D. 1895, said testator, Joseph Fabacher, in his lifetime duly acquired a domicile and residence in and then and there became an inhabitant of Waukesha, on Waukesha county and State of Wisconsin; that such residence and domicile of said Joseph Fabacher at Waukesha, in Waukesha county, Wisconsin, continued uninteruptedly from said 20th day of
906 June, 1895, down to and including the 3rd day of March, A. D. 1897, the date of his death.

4. That at and prior to the making and execution of said last will and testament of said Joseph Fabacher, deceased, he was of sound mind and memory and competent to make a will.

5. That at and prior to the making of said will so proposed for probate and on the 30th day of September, A. D. 1895, said testator, Joseph Fabacher, in his lifetime and while so domiciled at Waukesha, Wisconsin, was duly and legally married at the city of Milwaukee, in Milwaukee county and State of Wisconsin, to one Magdalena Frey, who survives him as his widow; that the issue of said Joseph Fabacher and Magdalena Frey is eleven children, viz., Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Anthony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabachar, Barbara Broderick (*née* Fabacher), Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, all of whom were born prior to said marriage of September 30th, 1895, and all of whom were by their said father, Joseph Fabacher, in his lifetime and subsequently to said marriage duly and severally recognized by him as his children and offspring, and that all of said children were at the time of his death and now are heirs-at-law of said Joseph Fabacher, deceased.

6. That the contestant herein, Antoinette Thorman, is a child and heir-at-law of said Joseph Fabacher, deceased, by a former marriage.

7. That in said will so propounded for probate the said testator did not mention his son, Lawrence Fabacher, as a beneficiary or legatee, nor did he mention the said daughter, Antoinette Thormann, but that said omission was not by a mistake or inad-
907 vertence on the part of said testator; and from the foregoing facts the court now here announces the following conclusions of law:

I. That the domicil of said testator, Joseph Fabacher, at the time of his death, on March 3rd, A. D. 1897, was at the city of Waukesha, in the county of Waukesha and State of Wisconsin.

II. That said testator, Joseph Fabacher, left him surviving his widow, Magdalena Fabacher, and twelve children, viz., Antoinette Thormann (*née* Fabacher), Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Anthony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick (*née* Fabacher), Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, his next of kin and heirs-at-law, all of whom are of full age except the children Magdalena Fabacher and Jacob Fabacher, and that all of said children are the legitimate and duly legitimatized children of said Joseph Fabacher, deceased, under and by virtue of the laws of the State of Wisconsin.

III. That the said will of said Joseph Fabacher, deceased, so offered for probate is entitled to probate in the county of Waukesha and State of Wisconsin as the last will and testament of said Joseph Fabacher, deceased, and the same hereby is admitted to probate as the last will and testament of said deceased.

IV. That judgement should be entered by this court admitting to probate the will of said Joseph Fabacher, deceased, and affirming the judgment of the county court admitting the same to probate, and that the records and proceedings herein should be transmitted to the county court for Waukesha county for further proceedings according to law.

908 And that the proponent's costs and attorneys' fees and the fees of the guardian *ad litem* in the circuit court should be paid out of the estate of said deceased.

Let judgment be entered in accordance with these findings.

By the court:

JAMES J. DICK,
Circuit Judge.

The following is a copy of the judgment:

(Venue, Caption, and Title.)

The above-entitled matter being at issue and having been duly placed upon the calendar of said court for trial at this term, and having been duly reached in its order, and being now here in said circuit court upon the appeal of Antoinette Thormann, contestant, from the order and determination of the county court of Waukesha county admitting said will to probate, and having now here duly come on for trial and hearing before this court and a jury, the proponent of said will duly appearing by Messrs. Ryan and Merton, his attorneys, and the contestant, Antoinette Thormann, appearing by Messrs. Carney, Clasen and Walsh, her attorneys, D. S. Tullar, Esq., appearing as guardian of the minor children of said deceased, interested in said matter, and said matter having been in all things duly tried, and the court having heard all the testimony and having received the verdict of the jury, and the matter having been duly argued before the court by the respective counsel of the parties, and

the court having this day filed its findings of fact and conclusions of law herein:

909 Now, therefore, on motion of Messrs. Ryan and Merton, attorneys for the proponent, and of D. S. Tullar, Esq., guardian *ad litem* for the minors interested, it is hereby—

Ordered, adjudged, and decreed that the said Joseph Fabacher, deceased, duly made and executed as and for his last will and testament the proposed will offered for probate and did duly make, execute, and publish the same as his last will and testament on the 29th day of October, in the year 1896, at the city of Waukesha, county of Waukesha and State of Wisconsin; that said deceased so executed said will of his own free will and accord, without any influence being brought to bear upon him whatever, and that he was not under any undue influence at the time of the making and subscribing of said will, and that in the execution of said will said testator duly complied with all the requirements of the statutes of the State of Wisconsin.

It is further ordered, adjudged, and decreed that at the time of the making of said will and at the time of the death of said deceased he, the said Joseph Fabacher, was a resident and inhabitant and his domicile was at the city of Waukesha, in the county of Waukesha and State of Wisconsin; that on the 20th day of June, A. D. 1895, said testator, Joseph Fabacher, in his lifetime, duly acquired a domicile and residence in and then and there became an inhabitant of Waukesha, in Waukesha county and State of Wisconsin; that said residence and domicile of said Joseph Fabacher at Waukesha, in Waukesha county, Wisconsin, continued uninterruptedly from said 20th day of June, 1895, down to and including the 3rd day of March, A. D. 1897, the date of his death.

It is further ordered, adjudged, and decreed that at and prior to the making of said will so proposed for probate and on the

910 30th day of September, A. D. 1895, said testator, Joseph Fabacher, in his lifetime, and while so domiciled at Waukesha, Wisconsin, was duly and legally married, at the city of Milwaukee, in Milwaukee county and State of Wisconsin, to one Magdalena Frey, who survives him as his widow; that the issue of said Joseph Fabacher and Magdalena Frey is eleven children, namely, Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Antony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick, *née* Fabacher, Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, all of whom were born prior to said marriage of September 30th, 1895, and all of whom were by their father, Joseph Fabacher, and subsequently to said marriage, duly and severally recognized by him as his children and offspring, and that all of said children were at the time of his death and now are the heirs-at-law of said Joseph Fabacher, deceased; that the contestant herein, Antoinette Thormann, is a child and heir-at-law of said Joseph Fabacher, deceased, by a former marriage; that in said will so propounded for probate the said testator did not mention his son Lawrence Fabacher as a beneficiary or legatee, nor did he mention the said daughter, Antoinette

Thormann, but that said omission was not by reason of an inadvertence or mistake on the part of said testator.

It is further ordered, adjudged, and decreed that the domicile of said testator, Joseph Fabacher, at the time of his death, on March 3rd, A. D. 1897, was at the city of Waukesha, in the county of Waukesha and State of Wisconsin; that said testator, Joseph Fabacher, left him surviving his widow, Magdalena Fabacher,
911 and twelve children, namely, Antoinette Thormann, *née* Fabacher, Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Antony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick, *née* Fabacher, Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, his next of kin and heirs-at-law, all of whom are of full age, except the children Magdalena Fabacher and Jacob Fabacher, who are minors, and that all of said children are the legitimate and duly legitimatized children of said Joseph Fabacher, deceased, under and by virtue of the laws of the State of Wisconsin.

It is further ordered, adjudged, and decreed that the said last will and testament of said Joseph Fabacher, deceased, so offered for probate, is entitled to probate in the county of Waukesha and State of Wisconsin as the last will and testament of said Joseph Fabacher, deceased, and the same hereby is admitted to probate as and for the last will and testament of said deceased.

It is further ordered, adjudged, and decreed that the judgment of the county court of Waukesha county, admitting said proposed will to probate as the last will and testament of Joseph Fabacher, deceased, be, and the same hereby is, in all things affirmed, and said last will and testament hereby is admitted to probate in Waukesha county, Wisconsin, as the last will and testament of said Joseph Fabacher, deceased.

It is further ordered, adjudged, and decreed that the record in this case be transmitted to the county court for Waukesha county, Wisconsin, for further proceedings according to law.

And it is further ordered, adjudged, and decreed that the costs of the proponent herein, together with his attorneys' fees
912 and the fees of the guardian *ad litem* for said minors in the trial of said action in this court, be paid out of the estate of said Joseph Fabacher, deceased, and that the costs and disbursements be taxed by the clerk in this action, amounting *in* the sum of two hundred forty-three and $\frac{25}{100}$ dollars.

Dated this 25th day of January, A. D. 1898.

By the court:

JAMES J. DICK,
Circuit Judge.

The following are the exception- to the findings of fact and conclusions of law:

(Venue and Title.)

Now comes the contestant herein, by Carney, Clasen and Walsh, her attorneys, and hereby files exceptions in writing to the findings

of fact and conclusions of law entered in the above-entitled matter by the circuit court of said county on the 5th say of January, A. D. 1898, as follows, to wit:

1.

The contestant herein excepts to the third finding of fact herein, to wit, "that at the time of the making of said will and at the time of the death of said deceased he, Joseph Fabacher, was a resident and inhabitant and his domicile was at the city of Waukesha, in the county of Waukesha and State of Wisconsin; that on the 20th day of June, A. D. 1895, said testator, Joseph Fabacher, in his lifetime, duly acquired a domicile and residence in and then and there became an inhabitant of Waukesha, in Waukesha county, Wisconsin; that such residence and domicile of said Joseph Fabacher at Waukesha, in Waukesha county, Wisconsin, continued uninterruptedly from said 20th day of June, 1895, down to and including the 3rd day of March, A. D. 1897, the date of his death," for the reason that said finding is contrary to law and evidence taken on the trial of said cause.

913

2.

The contestant herein further excepts to the fifth finding of fact herein, to wit, "that at and prior to the making of said will so proposed for probate, and on the 30th day of September, A. D. 1895, said testator, Joseph Fabacher, in his lifetime, and while so domiciled at Waukesha, Wisconsin, was duly and legally married at the city of Milwaukee, in Milwaukee county and State of Wisconsin, to one Magdalena Frey, who survives him as his widow; that the issue of said Joseph Fabacher and said Magdalena Frey is eleven children, viz: Joseph H. Fabacher, Albert Fabacher, Lawrence Fabacher, Anthony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick (*neé* Fabacher), Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, all of whom were born prior to said marriage of September 30th, 1895, and all of whom were by their said father, Joseph Fabacher, in his lifetime and subsequently to said marriage duly and severally recognized by him as his children and offspring, and that all of said children were at the time of his death and now are heirs-at-law of said Joseph Fabacher, deceased," for the reason that said finding is contrary to law and to the evidence taken on the trial of said cause.

3.

The contestant herein further excepts to the first conclusion of law herein, to wit, "that the domicil of said testator, Jacob Fabacher, at the time of his death, on March 3rd, A. D. 1897, was at the city of Waukesha, in the county of Waukesha and State of Wisconsin," for the reason that the same was based upon erroneous findings and is contrary to law.

4.

The contestant herein further excepts to the second conclusion of law herein, to wit, "that said testator, Joseph Fabacher, left him

surviving his widow, Magdalena Fabacher, and twelve children, viz: Antoinette Thorman (*née* Fabacher), Joseph Fabacher,
914 Albert Fabacher, Lawrence Fabacher, Anthony Fabacher, Louis Fabacher, Peter Fabacher, John J. Fabacher, Barbara Broderick (*née* Fabacher), Alois Fabacher, Magdalena Fabacher, and Jacob Fabacher, the next of kin and heirs-at-law, all of whom are of full age except the children Magdalena Fabacher and Jacob Fabacher, and that all of said children are the legitimate and duly legitimatized children of said Joseph Fabacher, deceased, under and by virtue of the law of the State of Wisconsin," for the reason that the same is based upon erroneous findings and is contrary to law, with the exception of that part of said conclusion of law which declares Antoinette Thorman, the contestant, the legitimate child and heir-at-law of said deceased.

5.

The contestant herein further excepts to the third conclusion of law, to wit, "that the said will of said Joseph Fabacher, deceased, so offered for probate, is entitled to probate in the county of Waukesha and State of Wisconsin as the last will and testament of said Joseph Fabacher, deceased, and the same hereby is admitted to probate as the last will and testament of said deceased," for the reason that the said conclusion is based upon erroneous findings and is contrary to law.

6.

The contestant herein further excepts to the fourth conclusion of law, to wit, "that judgment should be entered by this court admitting to probate the will of said Joseph Fabacher, deceased, and affirming the judgment of said county court admitting the same to probate, and that the records and proceedings herein should be transmitted to the county court for Waukesha county for further proceeding according to law, and that the proponent's costs and attorneys' fees and the fees of the guardian *ad litem* in the circuit court should be paid out of the estate of said deceased," for the reason that said conclusion of law is based upon erroneous findings and is contrary to law.

915 The contestant herein further excepts to the order of said court wherein judgment is ordered to be entered in accordance with the findings of fact and conclusions herein in the following language, to wit, "let judgment be entered in accordance with these findings," because the same is contrary to evidence taken on the trial of said cause and is contrary to law.

Dated this 2nd day of February, A. D. 1898.

CARNEY, CLASEN AND WALSH,
Attorneys for Contestant.

And because the foregoing matters and proceedings do not appear of record in the above-entitled action, and in order that the same may be made of record herein, I, James J. Dick, circuit judge of the thirteenth judicial circuit and of the circuit court of the county of Waukesha and State of Wisconsin, do hereby certify that

I have settled the foregoing bill of exceptions as the bill of exceptions in this action, and that the foregoing bill of exceptions contains all of the facts, testimony, and proceedings had and taken upon the trial of said action, together with all rulings of the court and exceptions taken or had at the trial of said action or thereafter.

In testimony whereof I have hereunto set my hand and seal, at Waukesha, in the county of Waukesha and State of Wisconsin, on this 29 day of October, A. D. 1898.

JAMES J. DICK, [SEAL.]
Circuit Judge.

[Endorsed:] Circuit court, Waukesha county. In the matter of the probate of the last will and testament of Joseph Fabacher, deceased. Bill of exceptions. Due service of a copy of within bill of exceptions admitted this 14th day of October, 1898. Ryan and Merton, att'ys for proponents. D. S. Tuller, guardian *ad litem* for Jacob and Magdalina Fabacher, minors. Filed in circuit court, Waukesha Co., Wis., Nov. 5, 1898. C. W. Fraser, clerk.

916 STATE OF WISCONSIN:

Circuit Court for Waukesha County.

ANDREW J. FRAME, Proponent; MAGDALENA FABACHER and Jacob Fabacher, Minors, by Their Guardian *ad Litem*. D. S. Tullar, Respondents,

vs.

ANTOINETTE THORMANN, Contestant and Appellant.

To Messrs. Carney, Clasen & Walsh, attorneys for contestant and appellant:

You will please take notice that the record in the above-entitled action has been remitted by the clerk of the supreme court of Wisconsin to the clerk of the circuit court for Waukesha county, Wisconsin, and that such remittitur was received and filed by the clerk of said circuit court in his office May 27, 1899.

Dated May 27, 1899.

RYAN & MERTON,
Attorneys for Proponent.

[Endorsed:] Original. Circuit court, Waukesha Co. Andrew J. Frame, proponent, *et al.*, respondents, *vs.* Antoinette Thormann, contestant & appellant. Notice of filing remittitur. Ryan and Merton, att'ys for proponent. Due service of within admitted this 27 day of May, A. D. 1899. Carney, Clasen & Walsh, att'ys for contestants. Filed in circuit court, Waukesha Co., Wis., May 29, 1899. J. G. Gorth, clerk.

917 STATE OF WISCONSIN:

In Circuit Court for Waukesha County.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

ANDREW J. FRAME, Proponent; MAGDALENA FABACHER and Jacob Fabacher, Minors, by their Guardian *ad Litem*, D. S. Tullar, Respondents,

vs.

ANTOINETTE THORMANN, Contestant and Appellant.

The above-entitled matter having been appealed by the contestant to the supreme court for the State of Wisconsin, and having been duly tried and judgment rendered in said court and the record remitted and filed in this court, the proponent having appeared, by Messrs. Ryan & Merton, his attorney- throughout such appeal, and now applying to this court for an order fixing his attorneys' fees for the preparation and trial of said appeal in said supreme court, and the court, being fully advised in the premises as to the services performed by said attorneys and the amount of fees which should be allowed under the circumstances in the case, independent and separate from any allowance heretofore or hereafter to be made for services performed in said matter other than those rendered in the supreme court:

Now, therefore, the court does hereby order that out of the estate of said Joseph Fabacher, deceased, said executor pay to Messrs. Ryan & Merton, attorneys for the proponent, for their services rendered in the preparation and trial of said appeal in the supreme court of the State of Wisconsin, the sum of twenty-five hundred dollars;
918 this allowance to be exclusive of and in addition to any allowance heretofore made for services rendered by said Ryan & Merton on behalf of said proponent in the contest of said will, either in the county or circuit court- for Waukesha county or hereafter made for services performed therein, either in the circuit or county court in said matter.

It is further ordered that no sum be paid to the attorneys for the contestant herein.

Dated June 1, 1899.

By the court:

JAMES J. DICK,
Circuit Judge.

[Endorsed:] Original. Circuit court, Waukesha Co. *Re* last will and testament of Joseph Fabacher, deceased. Andrew J. Frame, proponents *et al.*, respondents, *vs.* Antoinette Thormann, appellant, defendant. Order for att'ys' fees. Ryan and Merton, att'ys for proponent. Due service of within admitted this — day of ——, A. D. 189–. —— ——, att'ys for —— ——. Filed in circuit court, Waukesha Co., Wis., June 1st. J. G. Gorth, clerk.

919 STATE OF WISCONSIN, }
Waukesha County. }

In Circuit Court

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

ANDREW J. FRAME, Proponent; MAGDALENA FABACHER and Jacob Fabacher, Minors, by their Guardian *ad Litem*, D. S. Tullar, Respondents,

vs.

ANTOINETTE THORMANN, Contestant, Appellant.

The above-entitled matter having been appealed by the above named contestant and appellant to the supreme court of the State of Wisconsin from the judgment of this court, and said appeal having been duly tried and heard in said supreme court, and judgment having been rendered therein affirming the judgment of this court in respect to the allowance and probate of said will, and the remittitur of said supreme court having been duly filed in this court;

And it satisfactorily appearing to the court, now here, that the above-named guardian *ad litem* for the above-named minors, D. S. Tullar, has duly appeared throughout said appeal to protect the interests of his said minor wards, prepared and printed a brief on said appeal, and duly appeared in said supreme court and participated in the argument of said appeal in such court;

And said guardian *ad litem* of said above-named minors, Magdalena Fabacher and Jacob Fabacher, having now here duly applied to this court for an order fixing his fees as such guardian *ad litem* for the preparation and trial of said appeal in said supreme court, and the court being fully advised in the premises as to the services performed by said guardian *ad litem* upon said appeal and
920 the amount of fees which should be allowed him under the circumstances of the case and independent and separate from any allowance heretofore or hereafter to be made to him for services performed as such guardian *ad litem* in said above-entitled matter other than those rendered in said supreme court:

Now, therefore, the court does hereby order that out of the estate of the said Joseph Fabacher, deceased, said executor pay to D. S. Tullar, Esq., guardian *ad litem* for said minors, Magdalena and Jacob Fabacher, for his services rendered in the preparation and trial of said appeal in said supreme court of the State of Wisconsin the sum of one thousand dollars, this allowance to be exclusive of and in addition to any allowance heretofore made for services rendered by said D. S. Tullar as such guardian *ad litem* of said minors in the contest of said will, either in the county court or in the circuit court for Waukesha county, or hereafter to be made for services hereafter to be performed therein in either said county or circuit courts.

Dated June 1st, A. D. 1899.

By the court:

JAMES J. DICK,
Circuit Judge.

[Endorsed:] Circuit court, Waukesha Co. Andrew J. Frame, proponents, *vs.* Antoinette Thormann, contestants. Order fixing fees of g'd'n *ad litem* in supreme court. D. S. Tullar, g'd'n *ad litem* for minors. Filed in circuit court, Waukesha county, Wis., June 1st, 1899. J. G. Gorth, clerk.

921 Supreme Court of the United States.

ANTOINETTE THORMANN, Plaintiff in Error,
vs.
ANDREW J. FRAME, MAGDALENA FABACHER and JACOB FABACHER, Minors, by D. S. Tullar, Their Guardian *ad Litem*, Defendants in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judge of the circuit court in and for the county of Waukesha, State of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea in the supreme court of the State of Wisconsin, in the suit in which Andrew J. Frame is proponent, Magdalena Fabacher and Jacob Fabacher, minors, by D. S. Tullar, their guardian *ad litem*, are respondents, and Antoinette Thormann is contestant, No. 205 of the docket of said court, August, 1898, calendar, being the highest court of law or equity in the said State in which a decision could be had in the said suit between said above-named parties, and the said supreme court of Wisconsin, after the rendition of its judgment in said suit, as aforesaid, having, pursuant to law, remanded the said suit and judgment and the record and all proceedings in said suit upon which the said judgment was founded to the above-named the circuit court of the county of Waukesha, State of Wisconsin, and the same being now legally in the custody and under the control of the said the circuit court of the county of Waukesha, State of Wisconsin, the said Antoinette Thormann being domiciled in the city of New Orleans, parish of Orleans, State of Louisiana, and the said Andrew J. Frame, proponent, being domiciled in the city of Waukesha, county of Waukesha, State of Wisconsin, and the said Magdalena Fabacher and
922 Jacob Fabacher, minors, by D. S. Tullar, their guardian *ad litem*, claiming to be domiciled in the city of Waukesha, county of Waukesha and State of Wisconsin, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of *the* clause of the Constitution or treaty or statute of or commission held under the United States and the decision was against the title, right,

privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Antoinette Thormann, as by her complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then and there, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty (30) days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error
what of right and according to the laws and customs of the
923 United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the third day of June, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal U. S. Circuit Court, Western Dis. of Wisconsin.]

F. W. OAKLEY,
Clerk of the Circuit Court of the United States
for the Western District of Wisconsin,
By F. D. REED, *Deputy.*

Allowed by—
JOHN B. CASSODAY,
Chief Justice of the Supreme Court of Wisconsin.

924 [Endorsed:] Supreme Court of the United States. Antoinette Thormann, pl'ff in error, *vs.* Andrew J. Frame *et al.*, def'ts in error. Writ of error. (Original.) Filed in circuit court, Waukesha Co., Wis., Jun- 3, 1898. J. G. Gorth, clerk.

925 STATE OF WISCONSIN:

Supreme Court.

ANDREW J. FRAME *et al.*, Respondents,
vs.
ANTOINETTE THORMANN, Contestant, Appellant. } August Calendar, No. 205.

To the honorable the chief justice of the supreme court of the State of Wisconsin:

The petition of Antoinette Thormann, contestant and appellant in the above entitled and numbered cause, respectfully shows:

That on the 26th day of April, A. D. 1899, this honorable court rendered a decree and gave judgment in the above-entitled action in favor of defendant- and against this contestant and appellant, which said decree and judgment became final on the 27th day of May, 1899, and the record in said action was thereupon duly trans-

mitted to, and is now in the control and custody of, the circuit court of the county of Waukesha, State of Wisconsin.

That in said judgment and decree and the proceedings prior thereto certain errors were committed to the prejudice of this contestant and petitioner, all of which will more in detail appear from the assignment of errors which is filed with this petition.

That in this cause plaintiff has claimed rights, privileges, and immunities arising under the Constitution and laws of the United States, and that the decree and judgment of this honorable court is adverse to the same.

926 That there was drawn in question the validity of an authority exercised under the United States and the decision of this honorable court is against its validity.

That your petitioner is advised and verily believes that this court failed to give full faith and credit to a certain judgment rendered by the civil district court for the parish of Orleans, division "B," State of Louisiana, in the matter of the succession of Joseph Fabacher, No. 52941 of the docket of said court, appointing this petitioner administratrix of his said succession, as required by the Constitution of the United States.

That this honorable court, as petitioner is advised and verily believes, failed and neglected to give the same faith and credit to said proceedings had in the civil district court for the parish of Orleans, State of Louisiana, in said entitled and numbered cause as said judgment has in the courts of the State of Louisiana, from w ich said record was taken.

That petitioner desires a writ of error from the Supreme Court of the United States to review the decree and judgment of this honorable court.

Wherefore petitioner prays that a writ of error, to operate as a supersedeas, may issue in this behalf to the circuit court of Waukesha county, Wisconsin, the court in whose custody the said decree and judgment and the record upon which the same was based now is, for the correction of errors so committed, and that a transcript of the record of the proceedings and papers in the cause, duly authenticated, may be sent to the said Supreme Court of the United States.

CARNEY, CLASEN & WALSH,
Attorneys for Antoinette Thormann, Petitioner.

E. HOWARD McCALEB, *Of Counsel.*

Let a writ of error, to operate as a supersedeas, issue herein, as prayed for, on plaintiff in error, Antoinette Thormann, fur-
927 nishing bond in the sum of three thousand dollars.

JOHN B. CASSODAY,
Chief Justice Supreme Court of the State of Wisconsin.

Madison, Wis., —— —, 1899.

[Endorsed:] State of Wisconsin, supreme court. August calendar, 1898, No. 205. Andrew J. Frame *et al.*, respondents, *vs.* Antoinette Thormann, contestant, appellant. Petition and order for

writ of error. Original. Filed June 3, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed in circuit court, Waukesha Co., Wis., June 5th, 1899. J. G. Gorth, clerk.

928 STATE OF WISCONSIN:

Supreme Court.

ANTOINETTE THORMANN, Contestant and Plaintiff in Error, *vs.* ANDREW J. FRAME, MAGDALENA FABACHER and Jacob Fabacher, Minors, by D. S. Tullar, Their Guardian *ad Litem*, Defendants in Error.	August Calendar, 1898, No. 205.

The above-named contestant and plaintiff in error, in connection with her petition for a writ of error, makes the following assignment of errors, which she avers are to be found in the opinion, judgment, and decree of this honorable court herein:

I. That the supreme court of Wisconsin refused to give full faith and credit to a prior adjudication made and judgment given by the civil district court for the parish of Orleans, Louisiana, holding that the domicile of Joseph Fabacher at the time of his death was in the city of New Orleans, in violation of article IV of the Constitution of the United States and of the act of Congress passed in pursuance thereof.

II. The supreme court of Wisconsin erred in not holding that the judgment of the civil district court for the parish of Orleans appointing Antoinette Thormann administratrix of the succession of Joseph Fabacher and determining that the domicile of Joseph Fabacher was in the city of New Orleans was and is con-
929 clusive upon the same subject-matter in the courts of Wisconsin.

III. The supreme court of Wisconsin erred in not holding that the decree of the civil district court for the parish of Orleans adjudging that Joseph Fabacher, deceased, at and before his death was an inhabitant of and domiciled in the city of New Orleans could not and cannot be collaterally questioned and attacked.

IV. In granting letters of administration to Antoinette Thormann upon the succession of Joseph Fabacher, deceased, the civil district court for the parish of Orleans had to inquire and did necessarily determine that the said Joseph Fabacher, deceased, was domiciled in the city of New Orleans at the time of his death; and the supreme court of Wisconsin erred in not holding that the judgment or decision of the said civil district court for the parish of Orleans was conclusive that said Joseph Fabacher, deceased, was domiciled in the city of New Orleans at the time of his death, and in holding that the said judgment and determination of the said civil district court for the parish of Orleans was not so conclusive.

V. The judgment and decree of the civil district court for the parish of Orleans, Louisiana, in the succession of Joseph Fabacher,

appointing Antoinette Thormann administratrix, was rendered, signed, and became final more than three months and a half prior to the judgment probating the will by the county court of Waukesha county, Wisconsin, and it was rendered and signed before the return day for the probating and four days before plaintiff, the contestant, made her appearance in the county court of Waukesha county, Wisconsin; and the supreme court of Wisconsin erred in not holding that the said judgment and decree of the civil district court for the parish of Orleans, Louisiana, was and is conclusive upon all the matters necessarily embraced in and determined by it.

VI. The first decree rendered by the civil district court for the parish of Orleans controls, and this rule prevails where the
930 first decree was rendered in another State. The supreme court of Wisconsin erred in refusing to recognize and enforce such rule.

VII. In appointing the plaintiff administratrix of the succession of Joseph Fabacher the civil district court for the parish of Orleans necessarily determined—

(1st.) That the city of New Orleans was the place where the deceased resided at the time of his death.

(2nd.) That the plaintiff, Antoinette Thormann, was his beneficiary heir.

(3rd.) That he died intestate.

The supreme court of Wisconsin erred in refusing to give faith, credit, and effect to the judgment and adjudication of the civil district court for the parish of Orleans with respect to the matters so determined.

VIII. The civil district court for the parish of Orleans is, and was at all the times herein referred to, a competent court in the State of Louisiana, and the probate decree of said court determining the domicile of Joseph Fabacher, deceased, is, as to all matters necessary to give that court jurisdiction, conclusive upon the courts of another State. The supreme court of Wisconsin erred in refusing to recognize or allow the conclusiveness of said decree in reference to such matters.

IX. The decree of the civil district court for the parish of Orleans, rendered in the succession of Joseph Fabacher, appointing an administratrix, is a probate proceeding, and as such has the effect of a decree *in rem*, binding upon the whole world. The supreme court of Wisconsin erred in refusing to recognize or admit the binding force and effect of said decree with respect to the subject-matter thereof.

X. The supreme court of the State of Wisconsin erred in holding that the domicile of Joseph Fabacher at the time of his death
931 was in Waukesha county, Wisconsin, and not in New Orleans, Louisiana, the prior decree of the civil district court for the parish of Orleans in the matter of the succession of Joseph Fabacher being conclusive upon this question.

XI. There is error in this, to wit, that by the record aforesaid it appears that the judgment of the supreme court of the State of Wisconsin aforesaid was given for the said Andrew J. Frame, pro-

ponent; Magdalena Fabacher and Jacob Fabacher, minors, by D. S. Tullar, their guardian *ad litem*, defendants, whereas, by the law of the land, the said judgment ought to have been given for the said Antoinette Thormann against the said Andrew J. Frame, proponent; Magdalena Fabacher and Jacob Fabacher, minors, represented by their guardian *ad litem*, D. S. Tullar.

And the said Antoinette Thormann prays the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that she may be restored to all things which she has lost by occasion of the said judgment, and for general relief.

CARNEY, CLASEN & WALSH,
Attorneys for Antoinette Thormann,
Contestant and Plaintiff in Error.

E. HOWARD McCALEB, *Of Counsel.*

The above assignment of errors presented this 3rd day of June, 1899, and filed at the same time of allowing and filing the writ of error in the above-entitled case.

JOHN B. CASSODAY,
Chief Justice.

[Endorsed:] State of Wisconsin, supreme court. August calendar, 1899, No. 205. Antoinette Thormann, contestant, pl'ff in error, *vs.* Andrew J. Frame *et al.*, def'ts in error. Assignment of errors. Original. Filed June 3d, 1899. Clarence Kellogg, clerk of supreme court, Wis. Filed in circuit court, Waukesha county, Wis., June 5th, 1899. J. G. Gorth, clerk.

932 Supreme Court, State of Wisconsin.

ANDREW J. FRAME, Proponent; MAGDALENA FABACHER and Jacob Fabacher, by D. S. Tullar, Their Guardian *ad Litem*, Respondents,

vs.

ANTOINETTE THORMANN, Contestant and Appellant.

Know all men by these presents that we, Antoinette Thormann, as principal, and National Surety Company of the State of New York, as surety, are held and firmly bound unto Andrew J. Frame, Magdalena Fabacher, and Jacob Fabacher, minors, by D. S. Tullar, their guardian *ad litem*, in the full and just sum of three thousand dollars, to be paid to the said Andrew J. Frame, Magdalena Fabacher, and Jacob Fabacher, minors, by D. S. Tullar, their guardian *ad litem*, their and each of their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, by these presents.

Sealed with our seals and dated this 2nd day of June, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, in the supreme court of Wisconsin, in a suit depending in said court, wherein Antoinette Thormann is con-

testant and appellant and Andrew J. Frame, proponent; Magdalena Fabacher and Jacob Fabacher, minors, by D. S. Tullar, their guardian *ad litem*, respondents, judgment was rendered against said Antoinette Thormann and in favor of said Andrew J. Frame,
933 proponent; Magdalena Fabacher and Jacob Fabacher, minors, by D. S. Tullar, their guardian *ad litem*; and the said Antoinette Thormann having obtained a writ of error and filed a copy thereof in the clerk's office of the circuit court of Waukesha county, Wisconsin, to reverse the judgment in the aforesaid suit, and citation directed to the said Andrew J. Frame, Magdalena Fabacher and Jacob Fabacher, minors, by D. S. Tullar, their guardian *ad litem*, citing and admonishing them and each of them to be and appear at the Supreme Court of the United States, to be holden at Washington, within thirty (30) days from the 3 day of June, 1899:

Now, the condition of the above obligation is such that if the said Antoinette Thormann shall prosecute her writ to effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

ANTOINETTE THORMANN, [L. S.]
By JAMES G. FLANDERS, *Her Attorney.*
NATIONAL SURETY COMPANY, [L. S.]
By WM. BIGELOW, *Res. Vice-Pres't, and* [L. S.]

[Corporate Seal.]

ROBERT CAMP, *Res. Ass't Sec'y.*

Witnessed by—
P. O. KANNENBERG.
H. A. SCHERER.

Sealed and delivered in presence of—
CHARLES F. FAWCETT,
As to James G. Flanders as attorney.
FREDERICK H. REMINGTON,
For Antoinette Thormann.

Madison, Wisconsin, the 3rd day of June, 1899.
Approved:
JOHN B. CASSODAY,
Chief Justice of the Supreme Court of the State of Wisconsin.

STATE OF WISCONSIN, *ss:*

934 Personally appeared —— ——, who, being duly sworn, deposes and says that — is the surety on the within bond, and said surety is worth the full sum of — over and above all debts and liabilities and property exempt from execution.

Subscribed and sworn to before me this — day of ——, A. D. 1899.

——, ——,
Notary Public, Wisconsin.

[Endorsed:] Supreme court, State of Wisconsin. Andrew J. Frame, proponent; Magdalena Fabacher & Jacob Fabacher, by D. S. Tuller, their guardian *ad litem*, respondents, *vs.* Antoinette Thormann, contestant and appellant. Bond. Original. Filed June 3rd, 1899. Clarence Kellogg, clerk of supreme court Wis. Filed in circuit court, Waukesha Co., Wis., June 5th, 1899. J. G. Gorth, clerk.

935 STATE OF WISCONSIN, *ss:*

Supreme Court.

ANDREW J. FRAME ET AL., Respondents,
vs.
ANTOINETTE THORMANN, Contestant, Appellant.

I, Clarence Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that the annexed and foregoing are the original petition and order for writ of error, assignment of errors, and bond in the above-entitled action, filed in this court this 3rd day of June, 1899, and that the same are transmitted to the circuit court of Waukesha county pursuant to the direction of the chief justice of this court.

Seal Supreme Court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Madison, this 3rd day of June, A. D. 1899.

CLARENCE KELLOGG,
Clerk Supreme Court Wis.

[Endorsed:] Filed in circuit court, Waukesha county, Wis., June 5th, 1899. J. G. Gorth, clerk.

936 Supreme Court of the United States.

ANTOINETTE THORMANN, Plaintiff in Error,
vs.
ANDREW J. FRAME, MAGDALENA FABACHER and JACOB FABACHER, Minors, by D. S. Tullar, Their Guardian *ad Litem*, Defendants in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judge of the circuit court in and for the county of Waukesha, State of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea in the supreme court of the State of Wisconsin, in the suit in which Andrew J. Frame is proponent; Magdalena Fabacher and Jacob Fabacher, minors, by D. S. Tullar, their guardian *ad litem*, are respondents, and Antoinette Thormann is contestant, No. 205 of the docket of said court, August, 1898, calendar, being the highest court of law or equity in the said State in which

a decision could be had in the said suit between said above-named parties, and the said supreme court of Wisconsin, after the rendition of its judgment in said suit, as aforesaid, having, pursuant to law, remanded the said suit and judgment and the record and all proceedings in said suit upon which the said judgment was founded to the above-named the circuit court of the county of Waukesha, State of Wisconsin, and the same being now legally in the custody and under the control of the said the circuit court of the county of Waukesha, State of Wisconsin, the said Antoinette Thormann being domiciled in the city of New Orleans, parish of Orleans, State of Louisiana, and the said Andrew J. Frame, proponent, being domiciled in the city of Waukesha, county of Waukesha, State of Wisconsin, and the said Magdalena Fabacher and
937 Jacob Fabacher, minors, by D. S. Tullar, their guardian *ad litem*, claiming to be domiciled in the city of Waukesha, county of Waukesha and State of Wisconsin, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of the clause of the Constitution or treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Antoinette Thormann, as by her complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then and there, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty (30) days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs
938 of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the third day of June, in the year of our Lord one thousand eight hundred and ninety-nine.

[OFFICIAL SEAL.] F. W. OAKLEY,
Clerk of the Circuit Court of the United States
for the Western District of Wisconsin,
By F. D. REED, *Deputy.*

Allowed by—
JOHN B. CASSODAY,
Chief Justice of the Supreme Court of Wisconsin.

939 [Endorsed:] Supreme Court of the U. S. Antoinette Thormann, pl'ff in error, *vs.* Andrew J. Frame *et al.*, def'ts in error. Writ of error. Copy. Filed in circuit court, Waukesha Co., Wis., Jun- 5, 1899. J. G. Gorth, clerk.

940 UNITED STATES OF AMERICA, *ss:*

Supreme Court of the State of Wisconsin.

The President of the United States to Andrew J. Frame and Magdalena Fabacher and Jacob Fabacher, minors, by D. S. Tullar, their guardian *ad litem*, Greeting:

You and each of you are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden at the city of Washington, within thirty (30) days from the date hereof, pursuant to the writ of error filed in the clerk's office of the circuit court of the county of Waukesha, State of Wisconsin, wherein Antoinette Thormann is plaintiff in error and Andrew J. Frame and Magdalena Fabacher and Jacob Fabacher, minors, by D. S. Tullar, their guardian *ad litem*, are defendants in error, to show cause, if any there be, why the judgment rendered by the supreme court of the State of Wisconsin in said action against the said plaintiff in error, Antoinette Thormann, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3d day of June, in the year of our Lord one thousand eight hundred and ninety-nine.

JOHN B. CASSODAY,
Chief Justice of the Supreme Court of the State of Wisconsin.

941 [Endorsed:] Citation. Filed in circuit court, Waukesha Co., Wis., Jun- 6, 1899. J. G. Gorth, clerk. Service of the within citation admitted June 3rd, 1899. D. S. Tullar, guardian *ad litem* for Magdalena Fabacher and Jacob Fabacher, minors. Received June 3rd, 1899. Ryan & Merton, att'ys for Andrew J. Frame.

942 ANDREW J. FRAME ET AL., Respondents,
vs.
ANTOINETTE THORMANN, Appellant.

CASSODAY, *C. J.:*

It appears from the record that Joseph Fabacher died March 3, 1897, at Touro infirmary, in New Orleans, leaving a paper-writing purporting to be his last will and testament, bearing date October 29, 1896, and executed at Waukesha, Wisconsin, and which writing (omitting the formal parts) is to the effect (1) that the testator directed all his just debts, funeral expenses, and expenses of administration to be paid out of his personal estate; (2) that he donated and bequeathed to his beloved wife Magdalena the income of $20,000

of four per cent. New Orleans city bonds, to be paid by his executor or trustee of his last will and testament as collected by him, upon the express condition that she should continue to live and cohabit with as his wife and care for him in health and sickness until his death, otherwise that she should take nothing thereunder; (3) that he thereby willed and bequeathed unto his brother, Johannes, of Havre, France, an annuity of $200, to be paid to him each year so long as he should live, and at his death the further sum of $100 to provide for his funeral expenses; (4) that all the rest, residue, and remainder of his property, both real and personal, wheresoever situated, he thereby gave, devised, and bequeathed to his ten children, to wit, Joseph H., Albert, Anthony, Louis, Peter, John J., Barbara, Alois, Magdalena, and Jacob A., share and share alike, to each one-tenth thereof, to have and to hold as their own forever; (5) that upon the death of his said wife, Magdalena, or upon the violation of the provision for her contained therein by reason of non-performance on her part of the condition thereof, he thereby willed, devised, and bequeathed said $20,000 of four per cent. New Orleans city bonds to his said ten children, share and share alike, to each one-tenth part thereof;
943 (6) that he thereby nominated and appointed Andrew J. Frame, of Waukesha, Wisconsin, as sole executor and trustee of his said last will and testament; that upon the death of Joseph Fabacher such last will and testament was presented by such executor to the county court for Waukesha county for probate March 27, 1897, and that court on the same day fixed the time for the hearing thereof May 4, 1897, and thereupon caused notice thereof to be given; that upon the hearing thereof May 4, 1897, this contestant and the appellant herein, Antoinette Thormann, appeared by her attorney and objected to such probate, upon the grounds that she was a daughter and sole heir-at-law of said deceased; (1) that the deceased was formerly married to one Maria Anna Frey May 13, 1850, at New Orleans; that the issue of said marriage were two children, viz., Antoinette, the contestant herein, and Andreas, who died about 1887, unmarried and without issue; that said deceased and his said wife, Maria Anna, lived and cohabited together as husband and wife from the date of their marriage up to 1864, at which time he, the deceased, deserted and abandoned his said wife, Maria Anna, and went to live in concubinage with Magdalena Frey, a sister of his said wife, and continued so to live until about January, 1874; that January 12, 1874, his said wife, Maria Anna, instituted an action for divorce on the ground of adultery, and that a decree to that effect was granted therein to Maria Anna January 27, 1874, by the 5th district court of the parish of Orleans; that thereafter said deceased, in form, married Magdalena Frey at New Orleans; that the deceased had eleven children by Magdalena Frey, all of whom were illegitimate and ten of whom are named in the will, three of whom were born after such supposed marriage and eight of whom, including Lawrence—not named in will—were born before such supposed marriage; that at the time of the death of Joseph Fabacher,

deceased, he was domiciled in New Orleans, Louisiana, and an
944 inhabitant and resident thereof; that the county court of Waukesha county had no jurisdiction of such probate nor in the settlement and distribution of the estate of the deceased; (2) that any attempt on the part of Joseph Fabacher, deceased, to acquire or create a fictitious domicile, inhabitancy, or residence in Waukesha, Wisconsin, was made with a fraudulent purpose and intent of depriving the contestant, Antoinette Thormann, of her legitimate and hereditary rights as the sole heir-at-law of the deceased under the statutes of descent of Louisiana; (3) that the execution of such will was procured by undue influence exercised over the deceased, and particularly by Magdalena Frey, the alleged widow of the deceased; (4) that the will was not executed by Joseph Fabacher in the manner and form required by law: that August 17, 1897, such paper-writing was admitted to probate by the county court of Waukesha county; that thereupon the contestant appealed from such judgment of the county court so admitting the will to probate to the circuit court for Waukesha county; that subsequently the cause was tried by the circuit court of Waukesha county and a jury, and at the close of the trial the jury returned their verdict upon the questions submitted to them and to the effect (1) that the paper-writing presented for proof, allowance, and probate as the last will and testament of Joseph Fabacher, deceased, was executed in conformity with the provisions of the statutes of Wisconsin relating to wills; (2) that the alleged last will and testament of Joseph Fabacher, deceased, was his own voluntary act and deed; (3) that the domicile of Joseph Fabacher at the time of his death, March 3, 1897, was at the city of Waukesha, county of Waukesha, and State of Wisconsin; that thereupon the circuit court found as matters of fact, in effect, (1) that the deceased duly made and executed as and for his last will and testament the proposed will offered for probate and did duly make, execute, and
944½ acknowledge the same to be his last will and testament October 29, 1896, at Waukesha, in Wisconsin; (2) that the deceased so executed such will of his own free will and accord, without any influence being brought to bear upon him whatever, and that he was not under undue influence at the time of the making and subscribing of such will, and that in the execution thereof he had duly complied with all the requirements of the statutes of Wisconsin; (3) that at the time of the making of such will and at the time of the death of the deceased said Joseph Fabacher was a resident and inhabitant and his domicile was at the city of Waukesha, in Wisconsin; that June 20, 1895, said testator, in his lifetime, duly acquired a domicile and residence in and then and there became an inhabitant of Waukesha, in Waukesha county, Wisconsin; that such residence and domicile continued uninterruptedly from June 20, 1895, down to and including March 3, 1897, the date of his death; (4) that at and prior to the making and execution of said last will and testament the deceased was of sound mind and memory and competent to make a will; (5) that September 30, 1895, said testator, Joseph Fabacher, in his lifetime, and while so domiciled at

Waukesha, was duly and legally married, at the city of Milwaukee, in Wisconsin, to said Magdalena Frey, who survives him as his widow; that the issue of said Joseph Fabacher and Magdalena Frey were eleven children, to wit, Joseph H., Albert, Anthony, Louis, Peter, John J., Barbara, Alois, Magdalena, and Jacob, all of whom were born prior to said marriage of September 30, 1895, and all of whom were by their said father, Joseph Fabacher, in his lifetime and subsequently to the said marriage duly and severally recognized by him as his children and offspring, and that all of said children were at the time of his death and now are heirs-at-law of said Joseph Fabacher, deceased; (6) that the contestant herein,
Antoinette Thormann, is a child and heir-at-law of said
945 Joseph Fabacher, deceased, by such former marriage with
Maria Anna; (7) that in said will the testator did not mention his son Lawrence as a beneficiary or legatee, nor did he mention his daughter Antoinette Thormann, but that such omission was not by mistake or inadvertence on the part of the testator.

And as conclusions of law the circuit court found (1) that the domicile of the testator, Joseph Fabacher, at the time of his death, March 3, 1897, was at the city of Waukesha, in Wisconsin; (2) that said testator left him surviving his widow, Magdalena Fabacher, and the twelve children mentioned as his next of kin and heirs-at-law, all of whom were of full age, excepting Magdalena and Jacob, and that all of said children were the legitimate and duly legitimatized children of said Joseph Fabacher, deceased, under and by virtue of the laws of Wisconsin; (3) that the will of Joseph Fabacher, deceased, was entitled to probate in the county of Waukesha and State of Wisconsin as the last will and testament of said deceased, and the same was thereby admitted to probate as the last will and testament of said deceased; (4) that judgment should be entered admitting to probate the will of said deceased and affirming the judgment of the county court admitting the same to probate, and that the records and proceedings therein should be transmitted to the county court of Waukesha county for further proceedings according to law; that the proponent's costs and attorneys' fees and the fees of the guardian *ad litem* in the circuit court should be paid out of the estate of the deceased, and judgment was thereupon ordered to be entered in accordance with such findings. From the judgment so entered the contestant brings this appeal. Upon the argument in this court the counsel for the contestant frankly conceded that the question whether the will was executed in the manner and form required by the statutes of this State and the question whether such execution
had been procured by undue influence had, as a result of the
946 trial, both been eliminated from the case. It is also conceded
that this leaves but three grounds upon which counsel seek to reverse the judgment on this appeal. One is that the preponderance of the evidence shows that the testator was an inhabitant of and domiciled in New Orleans at the time of his death. This contention is based upon the concession that up to about June 20th, 1895 he was domiciled in New Orleans, and hence that the burden was on the proponents to prove that he had completely abandoned his

residence and domicile in New Orleans, without any intention of returning, and had settled permanently in Waukesha. As evidence in support of such contention, counsel refer to the fact that he was assessed in New Orleans on household goods and furniture exceeding $500 in value in each of the years 1895 and 1896, and that the same were paid; that he was not assessed in Waukesha until June 26, 1896; that he had purchased $50,000 of New Orleans city bonds, presumably in 1894 or 1895, which were kept at the Waukesha national bank; that he had kept an account at the New Orleans national bank in which he had deposited from May 6, 1896, to January 7, 1897, in the aggregate, $15,536.34, against which he had at various times drawn checks to nearly the same amount; that May 12, 1896, he deposited in the Waukesha bank $1,150, and that he then had on deposit in that bank a balance of $868.17, making in all $2,018.17, against which checks had been drawn, so that January 7, 1897, he only had a balance to his credit in that bank of $81.56; that in the summer and autumn of 1896 he manifested solicitude for the care of a family tomb he had erected seven years before in New Orleans, and made arrangements to have it repaired and fixed up, and expressed a desire to be buried there; that a short time prior to June 20, 1895, he had executed conveyances describing himself as of New Orleans; that in December, 1895, and May, 1896, he registered at a hotel in Chicago as of New Orleans; that his children remained in New Orleans and were members of the church
947 there; that when summoned as a juryman in New Orleans, January 6, 1897, he excused himself on the ground that he was seventy-two years of age, and that during 1895 and 1896 he made many conflicting oral declarations concerning his home and his intentions in reference to the same. On the other hand, there is evidence tending to prove that for several years prior to 1895 the testator, with his family and minor children, had been in the habit of spending his summers in Waukesha and the balance of his time at New Orleans; that in the fall of 1893 he purchased a fine lot in Waukesha and commenced the erection of a dwelling-house thereon, which was completed in the spring of 1894 and which was furnished and occupied by him and his family thereafter until his death; that prior to 1895 he was the owner of a substantial homestead in New Orleans, together with other real estate; that in the fall of 1894 and spring of 1895, with the exception of his tomb or cemetery lot, he sold all of his property in that city, including his homestead; that when asked by his neighbors and friends and business associates of New Orleans why he was disposing of his property he told them substantially the same thing, that he was not going to live any longer in New Orleans; that he was going to Waukesha to make his home, and that was why he was disposing of his property, and that such statements were not volunteered, but were simply made in response to inquiries by friends and business associates; that when he came to Waukesha he told all whom he had occasion to speak to upon that subject in connection with any act performed there that Waukesha was his home; that he had sold his home in New Orleans and no longer claimed or had any home; that in the

spring of 1895 he came with his family, including his two minor children, to Waukesha and brought with him his horses and carriage and also his bonds, mortgages and evidences of debt and deposited the same in a safety-deposit vault, in which he rented
948 a box, in the Waukesha national bank, and that they remained in that bank up to the time of his death; that he procured a pew for himself and family in St. Joseph's Catholic church, in Waukesha, and surrendered the seat in the church which they were formerly accustomed to occupy in New Orleans; that he *cal*imed that climate and waters of Waukesha were better for his health than in Louisiana; that he provided himself with a fur coat, fur cap, arctic shoes, and clothing which would make him comfortable in the Wisconsin climate in winter; that as his marriage to Magdalena Frey, July 24, 1874, in Louisiana, was void under the laws of that State, he was remarried to her in Milwaukee September 30, 1895, a little over three months after he so became a resident of Waukesha, and described himself in the certificate of marriage as a resident of Waukesha; that in the fall of 1896 he appeared before the board of registration in Waukesha and caused himself to be registered as a voter in the second ward of the city of Waukesha, in which he resided and voted at the general election in November, 1896, after being questioned by the board of registration and the inspectors of the election; that October 29, 1896, he executed the will in question, describing himself therein as of Waukesha, Wisconsin, and therein nominated and appointed the plaintiff herein, Andrew J. Frame, who was at the time president of the bank in which such bonds, mortgages, and evidences of debt were deposited, as sole executor and trustee of such will; that after he so became a resident of Waukesha he was in New Orleans during an election for mayor of that city, at which one of his best friends was a candidate, and when requested to vote he absolutely refused to do so on the ground that he was not a resident of New Orleans and had no right to vote in that city; that his children who were of age were all in business in New Orleans; that his son Lawrence was a man of considerable means and constructed a house on Calhoun street,
949 in that city, and furnished the same, in order that his father and mother might occupy the same when they visited their children in winter; that after the election in November, 1896, the testator was induced by the importunities of his wife and a desire to visit his children to go to New Orleans and occupy the house so constructed by Lawrence for the winter, but with the intention of returning to Waukesha in the spring, and that while there he was taken sick and died March 3, 1897. Upon evidence thus briefly outlined the jury found that at the time of the testator's death his domicile was at Waukesha. The court found the same to be the fact, and also found that the testator acquired a domicile and residence in and became an inhabitant of Waukesha June 20, 1895, and that such residence and domicile continued uninterruptedly from that time down to and including the date of his death. Such findings are not only supported by evidence, but by the great preponderance of the evidence. The testator was seventy-two years of

age. There is no claim that he was laboring under any disability which prevented him from changing his domicile from New Orleans to Waukesha. He was manifestly a man of decided notions of his own and with sufficient force of character to carry his purposes into execution. He, in common with all other citizens in this country, had a legal right to change his residence from one State to another whenever he desired. In the language of the Massachusetts court: "A man has a right to change his domicile for any reason satisfactory to himself. In determining whether there has been such a change from one place to another, the test is to enquire whether he has in fact removed his home to the latter place with the intention of making it his residence permanently or for an indefinite time. If he has, he loses his old domicile and acquires a new one, with all its rights and incidents, and the law does not enquire into the purposes or motives which induced him to make such change. It
may be because he prefers the laws of the new place of
950 domicile, or because he can diminish his taxes and other
burdens, or because he desires to bring a suit in a court which would not otherwise have jurisdiction. His status as an inhabitant depends upon the fact that he has made a change of his home, and not upon the motives or reasons which influenced him to do so." McConnell *v.* Xelley, 138 Mass., 373, and cases there cited; Jacob's Law of Domicile, sec. 142.

The relationships disclosed by the record and insisted upon by the contestant's counsel were well calculated to stimulate in the testator a desire to change his residence and domicil as he did. In doing so he was merely exercising the right of an American citizen. To effect the change it was only essential that such removal should be accompanied by an intention to thereafter make Waukesha his permanent residence or home. The State *ex rel.* Wood County *v.* Dodge County, 56 Wis., 79; Kempster *v.* The City of Milwaukee, 97 Wis., 343; Hart *v.* Lindsey, 17 N. H., 235; S. C., 43 A. D., 579; Ringgold *v.* Barley, 5 Md., 186; S. C., 59 A. D., 107, and note; Hairston *v.* Hairston, 27 Miss., 704; S. C., 61 A. D., 530. Even if there was an intention to return at some future indefinite time, yet that would not have prevented the change from being effectual. Holmes *v.* Greene, 7 Gray, 299; Sleeper *v.* Paige, 15 Gray, 349; Kempster *v.* Milwaukee, *supra;* Jacob's Law of Domicile, secs. 159, 171. Most of the testator's children resided in New Orleans, and the mere fact that he went there with his family for the winter, or that he kept a bank account there, or that he had expressed a desire to be finally buried in the tomb which had several years before been constructed at considerable expense, are not inconsistent with such change of domicile from New Orleans to Waukesha.

2. Counsel for the contestant contends that the Waukesha courts were barred from entertaining such jurisdiction and entering such judgment by reason of a formal final judgment of the civil district court for the parish of Orleans, Louisiana, in the succession of
Joseph Fabacher, rendered and signed April 22, 1897, ap-
951 pointing the contestant administratrix of said estate, and by her acceptance and qualification of such trust. This is

based upon duly authenticated documentary records of proceedings in that court, to the effect that the deceased died in New Orleans, March 3, 1897, of strangulation of umbilical hernia; that March 29, 1897, two days after the petition for the probate of the will was presented to the county court of Waukesha county, the contestant made and verified her petition to the judges of such civil district court for the parish of Orleans representing the death of her father; that at the time of his death and for many years before he was a "citizen of Louisiana, domiciled and residing in the city of New Orleans;" that he left property within that city and within the jurisdiction of that court; that she was the "sole surviving heir and legitimate child of said deceased," and prayed that she be appointed such administratrix; that an inventory of the property belonging to the estate be made and the value thereof appraised by appraisers to be appointed for that purpose; that an attorney for absent heirs be appointed and that the proper notices be given; that such petition was filed and notice of application and inventory ordered, and such appraisers and such attorney were appointed March 30, 1897; that such inventory was taken and the contestant petitioned the court for the approval of the same April 5, 1897; that such inventory stated that April 5, 1897, such appraisers visited the residence of said deceased at No. 1716 Calhoun street; that they "then and there requested Mrs. Magdalena Frey, known as the widow of Joseph Fabacher, deceased, to point out" the property and effects of the deceased, and she then and there informed them "that the deceased was not the owner of the furniture, movables, or effects contained" therein, and "that the same were owned entirely and exclusively by Mr. Lawrence Fabacher;" that April 10, 1897, they proceeded to further take an inventory, to wit, "one
952 marble tomb in lot situated in St. Joseph's cemetery, No. 2, bearing the inscription, Family of Joseph Fabacher; also two galvanized-iron sofas and five vases valued by said appraisers at the sum of $3,500; and there being nothing further to be included in this inventory," they then closed the same; that April 22, 1897, such inventory was by such court duly "approved and homologated as prayed for and according to law;" that on the same day of such approval that court made an order reciting that due and public notice having been given of such application according to law, and no opposition having been filed thereto, and the time for opposing the same having elapsed, the court "ordered that said Antoinette Thormann, wife of Charles W. Thormann, be appointed administratrix of this succession, and that letters as such issue to her on her complying with the requisites of the law. Judgment rendered and signed April 22, 1897. Fred D. King, judge. A true copy. F. E. Peterson, d'y c'k." That thereupon and on April 30, 1897, that same court appointed the contestant, "Mrs. Antoinette Thormann (born Fqabacher)," as "administratrix of the said succession of Joseph Fabacher," and stated therein "that she had fulfilled all the requisites of the law." The courts of Wisconsin are, of course, bound to give full faith and credit to the public acts, records, and judicial proceedings in Louisiana, as well as every other State in

the Union. Sec. 1, art. IV, Con. U. S. This court has gone so far as to sanction the disallowance of a claim against an estate by the probate court of another State, on the ground that such claim had been barred by the statutes of limitation of such State. Sanborn *v.* Perry, 86 Wis., 361. To a similar effect, Griggs *v.* Becker, 87 Wis., 313; Parker *v* Stoughton Mill Co., 91 Wis., 174, 181. So it has gone so far as to hold that where a resident of Wisconsin owning lands in other States and making a will disposing of all his property that the validity of the will, so far as such lands were concerned, must be left to the courts of the States, respectively,
953 where such lands were situated. Ford *v.* Ford, 70 Wis., 19; S. C., 72 Wis., 621. In that case it was held as the settled doctrine, supported by numerous adjudications, that the validity of every disposition of real estate by will must be governed by the law of the place where the land is situated, and that validity of every disposition of personal property by will must be governed by the law of the testator's domicile at the time of his death. 70 Wis., 44, 45. It was also held in that case that where such will directed the personal assets to be invested in lands in another State the validity of such investments must be left to the courts of such other State. Such rules were followed in such other States. Ford *v.* Ford, 80 Mich., 42; Robertson *v.* Pickerell, 109 U. S., 608. These cases are cited to show that it has been and is the settled purpose of this court to give full faith and credit to the public acts, records, and judicial proceedings of other States, but to entitle a judgment in a court of another State to such full faith and credit in an action or proceeding *in rem*, like the case at bar, it must appear from the record thereof that the court rendering the same had jurisdiction of the subject-matter of the action or proceeding. Rose *v.* Hinsley, 4 Crouch, 241; Christmas *v.* Russell, 5 Wall, 290; Galpin *v.* Page, 18 Wall., 350; Thompson *v.* Whitman, 18 Wall., 459; Hart *v.* Sansom, 110 U. S., 151; Guaranty, T. & S. D. Co. *v.* G. C. S. & M. R. Co., 139 U. S., 137. Thus it is held in one of the cases cited that "records and judicial proceedings of each State affecting property within it have in every other State the force and effect which they possess in the State of their origin, but as to similar property or estate situated in another State they have no greater or other force than similar records or proceedings in the courts of that State." Robertson *v.* Pickerell, 109 U. S., 608. The record of the Louisiana court in evidence merely shows that the contestant was, after appropriate proceedings, appointed administratrix of the succession
954 of the deceased, and that the inventory of the estate there presented consisted of the tomb, &c. There was no attempt in that court to adjudicate as to property situated in Wisconsin nor as to the domicile of the deceased. That court, it may be conceded, had jurisdiction as to any tangible property actually located in the State. In the Duchess of Kingston's case, cited and relied upon by counsel for the contestant, it was in effect determined by the judges unanimously, more than a hundred and twenty years ago, (1) that the judgment of a court of concurrent jurisdiction directly upon the point involved was conclusive between the same parties upon the

same matter directly in question in another court; (2) that the judgment of a court of exclusive jurisdiction directly upon the point involved was in like manner conclusive upon the same matter between the same parties coming incidentally in question in another court for a different purpose. Rex *v.* Duchess of Kingston, 20 How. St. Tr., 538. But even in that case the judges were equally unanimous in stating as exceptions to those rules that no judgment "is evidence of any matter which came collaterally in question, though within their jurisdiction, nor of any matter incidentally cognizable, nor of any matter to be inferred by argument from the judgment." These exceptions have frequently received the sanction of this and other courts. Lewis's Appeal, 67 Pa. St., 165; Bennett *v.* Holmes, 1 Dev. & B., 487; Cajolle *v.* Ferrin, 13 Wall., 469; Brown *v.* Brown, 37 N. H., 537; Hunter *v.* Davis, 19 Ga., 413; Church *v.* Chapin, 35 Vt., 224; Williams *v.* Williams, 63 Wis., 70, '1. In a recent English case it was "held that the decree of the probate court was not conclusive *in rem* as to the domicile, for that it did not appear that the decree was necessarily based on the finding as to domicil." De Mora *v.* Conchea, L. R., 29 Ch. Div., 268. It was there queried whether the findings on which a judgment *in rem* is based are in all cases conclusive against the world.

955 Certainly there was no adjudication in the Louisiana court which precluded the county court of Waukesha county from taking jurisdiction and admitting the will to probate and administering so much of the estate as was actually located in Wisconsin, and this includes the bonds, mortgages, and evidences of debt deposited in the Waukesha bank with the president thereof, who is executor of the will.

3. Counsel for the contestant contends that it was error for the court to hold that the eleven children of Joseph Fabacher and Magdalena Frey, all born before their marriage of September 30, 1895, were the legitimatized children of Joseph Fabacher, deceased, under and by virtue of the laws of Wisconsin. As indicated, all those children were of age and residents and citizens of Louisiana except the two minor children. The question of legitimatizing the children who were such citizens of Louisiana was not properly involved in determining whether the will should or should not be admitted to probate. True, the contestant presented that issue and so the trial court determined the same against the contestant, but it was foreign to the probate of the will. While the legislature of Wisconsin may properly regulate the sta us of citizens of this State, we do not understand that it has any powere to prescribe the status of citizens of *e*ither States. Cook *v.* Cook, 56 Wis., 195, and cases there cited; St. Sure *v.* Lindsfelt, 82 Wis., 351; The State *v.* Duket, 90 Wis., 276. The constitution of this State provides that "all lands within the State are declared to be allodial and feudal tenures are prohibited." Sec. 14, art. 1, Con. Being a resident of this State and domiciled therein, the testator had the legal right, under the laws of Wisconsin, to dispose of his property, real and personal, as he pleased and to whom he pleased so long as he infringed no law of this State. He had the legal right, therefore, to devise and be-

queath his property to his children by name, as he did,
956 whether they were legitimate or illegitimate. So far as the judgment in form attempted to legitimatize the adult children who were residing in and citizens of Louisiana, we must hold that it was extrajudicial and inoperative.

4. The testator being a resident and domiciled in Waukesha, as found and determined, we perceive no legal impediment to the marriage of the testator and Magdalena Frey September 30, 1895. It appears to be pretty firmly established that a statute of a State prohibiting a married person who has committed adultery and been divorced therefor from remarrying has no extraterritorial force, and hence cannot prevent such person from lawfully remarrying in some other State, although it may subject him to punishment in the former State. Dickson *v.* Dickson's Heirs, 1 Yerger, 110; S. C., 24 A. D., 444, 447; Phillips *v.* Madrid, 83 Me., 205; S. C., 12 L. R. A., 862; Fuller's Adm'r *v.* Fuller, 40 Ala., 301; Wilson *v.* Holt, 83 Ala., 528.

The courts of Louisiana have applied the same rule to such prohibitory statute of the State of New York. Succession of Hernandez, 46 La. Ann., 962; S. C., 24 L. R. A., 831. The incidental and collateral effect of such marriage on the two minor children it is unnecessary to consider.

By the COURT: The judgment of the circuit court is affirmed.

[Endorsed:] Filed in circuit court, Waukesha Co., Wis., June 27, 1899. J. G. Gorth, clerk.

957 STATE OF WISCONSIN:

Supreme Court.

I, Clarence Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify that I have compared the above and foregoing with the original opinion of the court by Chief Justice Cassoday, on file in my office, in the above-entitled cause, and that it is a correct transcript therefrom and of the whole thereof.

In testimony whereof I have hereunto set
Seal Supreme Court: my hand and affixed the seal of said court, at Madison, the 27th day of June, A. D. 1899.

CLARENCE KELLOGG,
Clerk of the Supreme Court of Wisconsin.

[Endorsed:] State of Wisconsin, supreme court. Andrew J. Frame *et al.*, respondents, *vs.* Antoinette Thormann, appellant. Certified copy of opinion of the court by Chief Justice Cassoday. Filed in circuit court, Waukesha Co., Wis., June 27, 1899. J. G. Gorth, clerk. Fee for the copy, $—.

958 In Circuit Court, Waukesha County, Wisconsin.

In the Matter of the Probate of the Last Will and Testament of JOSEPH FABACHER, Deceased.

Minutes of Proceedings.

1897, Oct. 30.—Return on appeal from county court filed.

1898, Jan. 5.—Case is called and trial proceeds, appearing for the proponent, Ryan & Merton, with C. F. Buck, of New Orleans, of counsel, and D. S. Tullar, as guardian *ad litem* of minor heirs; Carney, Clasen & Walsh, with E. Howard McCaleb, of counsel, appearing for the contestant. The guardian *ad litem* objected to the deposition as made by the contestant; arguments had; the guardian *ad litem* finally withdraws the objection; a jury is then empannelled and sworn as follows: Frank Hood, D. W. Powell, Morris Place, J. Lyman, J. L. Hoos, J. E. Welch, Owen Rowlands, M. Pendergast, J. Hingen, Thos. Henneberry, Ed. Fenlon, James D. Grant. Jury-list filed. Opening statements made to the jury. Juror M. Pendergast being sick, he is excused, and respective attorneys stipulate in open court that the case be tried before the eleven jurors. Ernest Merton, C. W. Newbury sworn. A special venire was issued and C. S. Hartwell, John Deck, and Ed. Fenlon summoned; venire returned. Will of Joseph Fabacher introduced in evidence. Peter Fabacher sworn; proponents rest. Contestants offer "Ex. A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T."

Court adjourns to 9 a. m., Jan. 6, 1898.

1898, Jan. 6, 9 a. m.—Trial proceeds; deposition of Pauline Gross; power of attorney in evidence; Lawrence Fa-

959 bacher, M. Meyer, W. G. Frate, Aug. Jacobson, James Poole, Anna Poole, Wm. Parsons, Chas. McCumber, Chas. Falk, Ernest Merton, sworn as interpreter; Patrick Houlahan, Elmer Putney, C. M. Taylor, Chas. McGovern, John Wolf, C. A. Bergeler, Fred Casper, Frank Fuller; depositions of Father Lamereaux, F. A. McKenzie, H. M. Enos; court adjourns to Jan. 7, 1898.

1898, Jan. 7.—Trial proceeds and the photographs of the tomb were introduced in evidence; John Constantine sworn; contestants closed; proponents introduced numerous depositions of Dr. F. Loeber, Louis Gregg, G. B. Thompson, Henry Rice, Bernard McCloskey, Gen. Eugene May, Otto Thorman; recess to 2 p. m.; R. A. Corbin, H. M. Enos, Oscar Sperber, H. M. Enos recalled; James Dent, Chas.

Trakel, Wm. Lippoldt, J. J. Clarke, Father Miller, Ed. Kimball, Geo. Harding, John L. Brickles, Paul Christoph sworn.

Court takes a recess to Jan. 8, 1898.

" " 8.—Trial proceeds; M. Holman, A. J. Frame, E. Merton, Lawrence Fabacher sworn; registers of the Hotel Leland offered in evidence; court takes a recess to Jan. 10, 1898.

" " 10.—Trial proceeds, with Lawrence Fabacher on the stand; proponents offer act of settlement; recess taken until 2 p. m.; Peter Fabacher sworn; appointment of guardian *ad litem* returned; proponents rests; Oscar Sperber, Father Miller recalled; contestants closed; testimony finished; arguments to jury; court adjourns to Jan. 11, 1898.

" " 11.—Arguments to the jury; court adjourns to Jan. 12, 1898.

1898, Jan. 12.—Trial proceeds; arguments continued; recess to 2 p. m.; at 2.50 p. m. the court charges the jury
960 and they retire for deliberation under charge of W. S. Young, a sworn officer of the court; at five o'clock p. m. the jury return into court and render the following verdict: We, the jury duly empaneiled and sworn in this action to try the issues of fact therein submitted to us on the following questions, do find, determine, and answer such questions as follows:

First. Was the paper-writing presented for proof, allowance, and probate as the last will and testament of Jos. Fabacher, deceased, executed in conformity with the provisions of the statutes of this State relating to wills? Answer. "Yes."

Second question. Was the said alleged last will and testament of said Joseph Fabacher, deceased, his own voluntary act or was it the result and product of undue influence?

Answer. "The said alleged last will and testament of said deceased was the said deceased's own voluntary act and deed."

Third question. Was the domicil of said Joseph Fabacher at the time of his death, the 3rd day of March, in the year 1897, at the city of Waukesha, county of Waukesha, State of Wisconsin, or was it at the city of New Orleans, State of Louisiana?

Answer. The domicil of said Joseph Fabacher, deceased, at the time of his death, the 3rd day of March, in the year 1897, was at the city of Waukesha, county of Waukesha, State of Wisconsin.—Morris A. Place, foreman.

1898, Jan. 24.—The court denies the motion for a new trial and
961 orders judgment upon the verdict and not to tax costs against the defendant or contestant.
1898, Jan. 25.—Findings of fact and conclusions of law filed and order for proponents' attorney fees filed.
" " 27.—Judgment filed and notice of entry of judgment filed.
" " 31.—Bill of costs taxed and filed.
" Feb. 4.—Exceptions to findings of fact and conclusions of law filed.
" M'ch 7.—Notice of appeal and undertaking on appeal filed.
" " 29.—Stipulation and order extending time to file bill of exceptions filed.
" May 2.—Charge to jury filed.
" " 3.—Motion filed.
" " 31.—Testimony filed.
" Nov. 5.—Bill of exceptions filed.
1899, May 27.—Remittitur from supreme court filed.
" " 29.—Notice of filing remittitur filed.
" June 1.—Order for att'ys' fees filed.
" " 1.—Order fixing fees of guardian *ad litem* in sup. ct. filed.
" " 3.—Writ of error filed.
" " 5.—Motion and order for writ of error, assignment of errors, and bond from supreme court filed.
" " 5.—Copy of writ of error filed.
" " 6.—Citation filed.
" " 27.—Certified copy of opinion of Justice C. J. Cassoday filed.
" " 28.—Return on writ of error to United States Supreme Court made.

962 UNITED STATES OF AMERICA,
Eastern District of Wisconsin, Waukesha County, } ss:

I, J. J. Dick, presiding judge of the circuit court of the county of Waukesha, State of Wisconsin, do hereby certify that J. G. Gorth, whose genuine signature is annexed to the above certificate, was at the date thereof the clerk of the circuit court of Waukesha county aforesaid; that the official acts and doings of said clerk are entitled to full faith and credit, and that the said attestation is in due form of law.

Given under my hand and seal this 27 day of June, 1899.

[Seal Circuit Court, Waukesha Co., Wisconsin.]

JAMES J. DICK,
Judge of the Circuit Court for the County of Waukesha, State of Wisconsin.

I, J. G. Gorth, clerk of the circuit court of the county of Waukesha, do hereby certify that James J. Dick, whose genuine signature appears to the foregoing certificate, is now and was at the time of signing the same presiding judge of the circuit court of the county of

Waukesha, duly elected and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said court this 28th day of June, A. D. 1899.

[Seal Circuit Court, Waukesha Co., Wisconsin.]

J. G. GORTH,
Clerk of Circuit Court, Waukesha County, Wisconsin.

963 UNITED STATES OF AMERICA, } ss:
Eastern District of Wisconsin, Waukesha County, }

In pursuance of the command of the writ of error within and annexed hereto I, J. G. Gorth, clerk of the circuit court of the county of Waukesha, in the State of Wisconsin, the said circuit court being a court of record and having a seal, do herewith transmit a true, full, and complete copy of the record, bill of exceptions, assignment of errors, bond for writ of error, with the approval thereon of the chief justice of the supreme court of Wisconsin, and all proceedings in this case of Andrew J. Frame, proponent; Magdalena Fabacher and Jacob Fabacher, by D. S. Tullar, their guardian *ad litem*, respondents, and Antoinette Thormann, contestant, lately pending in the supreme court of the State of Wisconsin, together with the petition for writ of error, the allowance thereof by the chief justice of the supreme court of the State of Wisconsin, the original writ of error as allowed by said chief justice and lodged with the clerk of said circuit court of Waukesha county, together with the copy thereof, likewise lodged with said clerk, together with the original citation to the adverse parties to said writ, with their admission of service thereof, the said record, bill of exceptions, assignment of errors, and all proceedings in said suit, including said bond, petition for writ, and the allowance thereof, having been by said supreme court of the State of Wisconsin remanded to the said circuit court of Waukesha county, and now being in the custody of said court, all under my hand and the seal of said court.

Witness my official signature and the seal of said circuit court of the county of Waukesha, in the State of Wisconsin, at the city of Waukesha, county of Waukesha, State of Wisconsin, this 27th day of June, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States of America the one hundred twenty-third.

[Seal Circuit Court, Waukesha Co., Wisconsin.]

J. G. GORTH,
Clerk of the Circuit Court of the County of Waukesha, State of Wisconsin.

Endorsed on cover: File No., 17,455. Wisconsin, Waukesha county, circuit court. Term No., 341. Antoinette Thormann, plaintiff in error, *vs.* Andrew J. Frame and Magdalena Fabacher & Jacob Fabacher, minors, by D. S. Tullar, their guardian *ad litem*. Filed July 7th, 1899.

No. 341.

FILED
JAN 22 1900
JAMES H. McKENNEY,
Clerk.

Br. of Maury & McCaleb for P.C.

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Jan. 22, 1900.

No. 341.

ANTOINETTE THORMANN, PLAINTIFF IN ERROR,

vs.

ANDREW J. FRAME AND MAGDALENA FABACHER AND JACOB FABACHER, MINORS, BY D. S. TULLAR, THEIR GUARDIAN AD LITEM.

IN ERROR TO THE CIRCUIT COURT OF THE COUNTY OF WAUKESHA, STATE OF WISCONSIN.

BRIEF IN OPPOSITION TO THE MOTIONS TO DISMISS OR AFFIRM.

WM. A. MAURY,
E. HOWARD MCCALEB,
Counsel for Plaintiff in Error.

WASHINGTON, D. C., 1505 PA. AVE., *January* 20, 1900.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1-20-1900

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 341.

ANTOINETTE THORMANN, PLAINTIFF IN ERROR,

vs.

ANDREW J. FRAME AND MAGDALENA FABACHER AND JACOB FABACHER, MINORS, BY D. S. TULLAR, THEIR GUARDIAN AD LITEM.

IN ERROR TO THE CIRCUIT COURT OF THE COUNTY OF WAUKESHA, STATE OF WISCONSIN.

Brief in Opposition to the Motions to Dismiss or Affirm.

It is respectfully submitted that neither the motion to dismiss this writ of error, nor, that failing, the motion to affirm the judgment below should prevail.

On the contrary, we submit that, as the motion to dismiss involves the sole question presented by the writ of error, and

as the law of that question appears to be with the plaintiff in error, the judgment of the Supreme Court of the State of Wisconsin should be reversed, and the case remanded for a new trial.

STATEMENT.

This is a petition, in probate, filed in the County Court of Waukesha County, on March 27, 1897, by Andrew J. Frame, one of the defendants in error.

It sets up that Joseph Fabacher died at New Orleans, on March 3, 1897; that he was, at the time of his death, an "inhabitant" of the County of Waukesha; that he left personal estate amounting to $65,000, and real estate, in Wisconsin, yielding an annual sum not exceeding $2,500; that he left him surviving a widow, Magdalena Fabacher, and eleven children, his next of kin and heirs-at-law, namely, Lawrence, Joseph H., Albert, Anthony, Louis, Peter, John J., Barbara Bradrich, Alis Fabacher, Magdalena Fabacher, and Jacob Fabacher, all of full age except the last two, Magdalena and Jacob, who are minors, and Johannes Fabacher, a brother and legatee; that the deceased left a will, duly executed, whereof Petitioner is named Executor; and praying that the will may be admitted to probate and letters testamentary issued to petitioner. (Rec., 1.)

On the same day, D. S. Tullar was appointed guardian *ad litem* of the two minors, (Rec., 3,) and publication ordered, notifying "all persons interested in said estate" that there would be a hearing on the petition at a regular term of the Court to be held on the first Tuesday of May, 1897. (Rec., 2.)

On May 4, 1897, the plaintiff in error, Antoinette Thor-

mann, of New Orleans, La., appeared, by counsel, and objected to the probate of the alleged will, on the following grounds:

I. That the Court was without jurisdiction to allow probate, the testator having had, continuously, his domicil and residence in the City of New Orleans, from 1843 until his death.

II. That any attempt of deceased to acquire or create a fictitious domicil, inhabitancy, or residence in the City of Waukesha, Wisconsin, "was made with a fraudulent purpose and intent of depriving the said contestant, Antoinette Thormann, of her legitimate and hereditary rights as the sole heir-at-law of said deceased, under the statutes of descent of the State of Louisiana."

III. That the execution of the will was procured by undue influence, exercised by the beneficiaries under the will, and, especially, by testator's widow.

IV. That the will was not executed in the manner and form required by law. (Rec., 5, 6.)

The issues, thus raised, came on for trial. Much testimony was taken, and much documentary evidence adduced, and on September 1, 1897, the said County Court admitted the will to probate, finding as a fact, *inter alia*, that the testator had his domicil in Waukesha County, and issued letters testamentary to the Executor. (Rec., 8, 9. See Opinion of Court, pp. 32–56.)

Thereupon, the Plaintiff in Error appealed to the Circuit

Court of Waukesha County (Rec., 13–16), where all the issues tried before the County Judge were tried, *de novo*, before a jury.

After hearing a great deal of testimony, the jury found upon several specific issues submitted to them by the Court, and, amongst others, on the issue as to the true domicil of the testator at the time of his death, the finding on that issue being that the domicil of the testator, at the said time, was the City of Waukesha. The findings on the other issues being also in favor of the proponent of the will (Rec., 20, 21), and the Court concurring in said findings, judgment went accordingly (Rec., 24–26), the judgment of the County Court being, in all things, affirmed. (Rec., 21–26.)

From the judgment of the Circuit Court of Waukesha County the plaintiff in error duly appealed to the Supreme Court of the State. (Rec., 29, 32.)

On April 25, 1899, the State Supreme Court affirmed the judgment of the Circuit Court. (Rec., 33.)

To review that judgment a writ of error was, upon due allowance, sued out of this Court, by Antoinette Thormann, the plaintiff in error (Rec., 551,) and the case is now here.

Is there a federal question to support this writ of error?

The writ was allowed by the Chief Justice of the Supreme Court of Wisconsin.

In her petition for the writ, the petitioner avers that, in this cause, she has claimed "rights, privileges and immunities arising under the Constitution and laws of the United States," and that the judgment of the said Supreme Court is

adverse to the same; that there was drawn in question the validity of an authority exercised under the United States, and that the decision of the said Supreme Court is against its validity; that the said Supreme Court has failed to give full faith and credit to a certain judgment rendered by the civil district court for the parish of Orleans, Division "B," State of Louisiana, in the matter of the succession of Joseph Fabacher, No. 52,941 of the docket of said court, appointing petitioner administratrix of his said succession, as required by the Constitution of the United States; and that the said Supreme Court failed to give the same faith and credit to said proceedings had in the said civil district court for the Parish of Orleans, State of Louisiana, in this cause as said judgment has in the courts of the State of Louisiana, from which said record was taken. (Rec., 552, 553.)

Accompanying, and filed with, her petition for the writ, are eleven assignments of error, based on the grounds presented in the petition, (Rec., 554–556,) and which may be more particularly referred to in the progress of the argument.

The issue on which the case turned in the State courts was, as to the domicil of the decedent, Joseph Fabacher, at the time of his death.

The contestant, the plaintiff in error, to maintain the issue on her part joined, introduced, amongst other evidence, the record of the judgment of the civil district court of the parish of Orleans, Louisiana, appointing Antoinette Thormann, the plaintiff in error, administratrix of the succession of Joseph Fabacher, as *conclusively* establishing (1) that the decedent was domiciled in New Orleans, in the Parish of Orleans, at the time of his death, and (2), as a necessary

consequence, that the County Court of Waukesha, Wisconsin, had no jurisdiction of the probate of the decedent's will. But the Supreme Court of the State, treating the question of domicil as at large, denied such effect to the said judgment, holding that the true domicil of the decedent, at the time of his death, was Waukesha, and, consequently, that the County Court of the County of Waukesha had jurisdiction of the probate of said will. (Rec., 566–569.)

If now this ruling was, as we contend, a refusal to give "full faith and credit" to the judgment of the civil district court of the parish of Orleans, in the particulars mentioned, all the proceedings below were *coram non judice*. From which it follows, that it is *indispensable* to the correct decision of the case, *in any of its aspects*, that the question thus raised under the Constitution of the United States should be decided by this Court.

Did the Supreme Court of Wisconsin refuse to give "full faith and credit" to the judgment of the Louisiana Court?

This question involves an inquiry into the scope and effect of the judgment of the civil district Court of the Parish of Orleans appointing Antoinette Thormann, plaintiff in error, administratrix of the succession of Joseph Fabacher, deceased. (Rec., 136, 501.)

According to the law of Louisiana, it was indispensable to the validity of the judgment that three averments made in the petition (Rec., 138, 503, 504) should be established to the satisfaction of the Court; namely, (1) that Joseph Fabacher, deceased, was domiciled in the Parish of Orleans at the time

of his death; (2) that the petitioner was the sole surviving heir of the deceased; and (3) that the deceased died intestate.

Notice of the application was given according to law, (Rec., 136, 140; and Rev. C. C., arts. 1114–1120,) and an attorney and counsellor at law appointed "to represent the absent heirs." (Rec., 140.)

And if the existence of assets in the State of Louisiana was necessary to give jurisdiction in the premises, there was such property, to wit, one marble tomb,* two galvanized iron sofas, and five vases of the appraised value of $3,500. An attempt was made to inventory divers household effects, which, however, the alleged widow of the deceased, upon interrogation, claimed as her own property. (Inventory, Rec., 135.)

It will thus be noted, that the alleged widow was brought in direct contact with the opening of the succession of the deceased in the parish of Orleans.

Afterwards, she actually intervened in that proceeding to protect said household effects from sequestration and removal at the suit of plaintiff in error. (Rec., 180–194, 505–507.)

In addition, at the time the application of plaintiff in error was pending in New Orleans the widow of the deceased and all his children named as legatees were living in New Orleans, except one who was living elsewhere in the State of Louisiana. (Dep. Antoinette Thormann, Rec., 227; dep. Pauline Gross, Rec., 144; Inventory, Rec., 135.)

All of these parties had notice, therefore, of the applica-

*There may be property in a tomb. (*Choppin vs. Dauphin*, 48 A., 121; *Barker vs. Wall*, 29 A., 38; *McEnery vs. Pargoud*, 10 A., 497.)

tion, in the manner prescribed by the law of Louisiana, and upon that ground alone are bound by the judgment on the application. And as to the heir and annuitant, the testator's brother, Johannes Fabacher, who resides in France, he was fully represented by the attorney and counsellor at law appointed by the civil district court to represent "the absent heirs." (Rec., 140; Rev. Civ. C., Arts. 1210–1219.)

Such representation by counsel is not merely nominal, but, as the code shows, (*supra*,) serious and substantial.

The judgment of the Louisiana Court may, therefore, be said to be as well *inter partes* as *in rem*.

Indubitably, the judgment of that Court is conclusive as to the domicil of the decedent, the right of the petitioner to have administration of the succession, and the intestacy of the decedent, the determination of these questions being fundamental to it, whether a precise issue was taken on any one of them or not. (2 Black, Judg., § 614, *and cases cited in note* 547.)

Said the Supreme Court of Massachusetts, in *Burton vs. Shannon*, (99 Mass., 200:)

> The estoppel is not confined to the judgment, but extends to all steps involved in it as necessary steps or the groundwork upon which it must have been founded. It is allowable to reason back from a judgment to the basis upon which it stands, upon the obvious principle that, where a conclusion is indisputable, and could have been drawn only from certain premises, the premises are equally indisputable. (Quoted in 2 Black, Judg., § 613.)

That the Louisiana judgment has the conclusive effect contended for, in the particulars mentioned, is established by overwhelming authority. Indeed, this Court, in *Simmons vs. Saul* (138 U. S., 439, 451), held that a grant of administration by a parish Court of Louisiana, the averments

necessary to the jurisdiction of the Court appearing on the face of the proceedings, could not be collaterally assailed on the ground of the non-existence of material facts necessary to support the judgment, the judgment being held to be *conclusive* as to the existence of such facts.

In *Garrett et al. vs. Boeing et al.* (15 C. C. A., 209; S. C., 68 Fed. Rep., 51) it was held that the judgment of a parish Court, in Louisiana, granting administration could not be attacked, collaterally, on the ground that the decedent died in another parish, the judgment being held to be conclusive on the point of residence. To the same effect are the cases of *Holmes vs. Oregon and Cal. R. R. Co.* (5 Fed. Rep., 523; S. C., 9 Fed. Rep., 229), *Va. and Ga. R'y Co. vs. Mahmey* (89 Tenn., 311), *Eller vs. Richardson* (89 Tenn., 575), *Dusen vs. Dupré* (32 A., 896), *Gravenburg vs. Bradford* (44 A., 418), *Vinet, Ex'or, vs. Bros and Richardson* (48 A., 1254). In *Franklin vs. Franklin* (91 Tenn., 119) it was held, that a grant of administration was, upon collateral attack, conclusive on the fact of the decedent's intestacy.

Undoubtedly, the judgment of the Louisiana Court is conclusive, in that State, as to the domicil and intestacy of the decedent, and the heirship of plaintiff in error, but that judgment has a more extended scope than a judgment *inter partes*, for it is conclusive on all the world, the suit in which it was rendered being essentially a proceeding *in rem*.

One of its objects was to fix the *status* of the decedent's estate wherever it might be situated, for all his movable property must necessarily be distributed in obedience to the law of his domicil at the time of his death. It was, therefore, of prime importance that his succession should be opened at the place of his domicil. Otherwise there would

be no ascertained law or rule for the distribution of his movable property, or the determination of the validity of any testamentary act relating thereto.

This is in complete harmony with the doctrine of ancillary administration and of the restriction of each administration to the assets situate within the jurisdiction creating it.

Hence a grant of probate or of administration is not to be questioned anywhere but in the Court that made it. (*McFarland vs. Stone*, 17 Vt., 165; *Lawrence vs. Englesby*, 24 Vt., 42; *Naylor vs. Moffatt*, 29 Mo., 126; *Savage vs. Benham*, 17 Ala., 119.)

As a grant of probate of a will determines the *status* of the instrument and the estate it operates upon (Black Judg., § 638, *and cases cited*), so does a grant of domiciliary administration fix the *status* of the decedent's succession (*ibid.*, § 639, *and cases cited*). Both proceedings being essentially *in rem* must stand until reversed by a direct proceeding impeaching their validity, as by an appeal, or, in Louisiana, by the action of nullity.

Although present, in New Orleans, at the time the opening of the succession of Joseph Fabacher took place, none of the legatees under the will filed an opposition thereto. Indeed, the alleged widow did in fact, as we have seen, intervene *for another purpose*, namely, to oppose the claim of the plaintiff in error, as administratrix, to certain household effects as the property of Fabacher's succession.

It is to such proceedings, no doubt, that this Court had reference, in *Pennoyer vs. Neff* (95 U. S., 727), when it said, that substituted service by publication against non-residents is permissible "*in all actions which are substantially proceedings in rem.*"

The judgment of the Wisconsin Court that Joseph Fabacher was domiciled in Waukesha, cannot control, because *posterior in date* to the Louisiana judgment. The former judgment having been rendered on September 1, 1897 (Rec., 8, 9), and the latter, on April 30, 1897, (Rec., 133), the latter judgment, being prior in time, must prevail. (*Stout vs. Lye*, 103 U. S., 66; *Rogers vs. Odell*, 39 N. H., 417; *Low vs. Mussey*, 41 Vt., 393; *Peak vs. Sviger*, 10 Yerg., 469.)

It follows, therefore, that the collateral attack on the Louisiana judgment made by the Supreme Court of Wisconsin was without warrant in law.

If now the force and effect of the Louisiana judgment is such as we have said, can we doubt, for a moment, that the Supreme Court of Wisconsin refused, in its judgment, to give that force and effect to the Louisiana judgment?

That refusal was, clearly, the denial of a right set up and claimed by the plaintiff in error under the Constitution of the United States. (*Green vs. Van Buskirk*, 5 Wall., 307; S. C., 7 Wall., 139; *Huntington vs. Attrill*, 146 U. S., 657, 666, *and cases therein cited.*)

If now it sufficiently appears, that the right claimed by plaintiff in error under the Constitution was duly set up and insisted upon in the Supreme Court of Wisconsin, and denied by that Court, the jurisdiction of this Court over this writ of error would seem to be complete.

That the federal right was duly set up and insisted on in the State Supreme Court, appears in the opinion of that Court. By the law of Wisconsin, it is required that the opinions of the Supreme Court of the State shall be filed, and "shall constitute and be held a part of the record, and shall be certified to any court of the United States to which

such record may be removed." (Rev. Stat. of Wisconsin, 1898, Sec. 2410, p. 1740, by Sandborn & Berryman.) So that in that State, as in Louisiana, the opinions of its Supreme Court *form a part of the record* in cases determined by it.

It is apparent, therefore, that even under Section 25, of the Judiciary Act of 1789, requiring that the federal question should appear "on the face of the record," this Court could have examined the opinion of the State Court, in a case like this, for the purpose of discovering whether a federal question was involved in the judgment below.

Since the repeal of that part of Section 25 referred to, this Court has not hesitated to examine the opinions of State Courts for the purpose mentioned, when properly authenticated. (*Murdock vs. Memphis*, 20 Wall., 590; *Cropley vs. New Orleans*, 108 U. S., 105; *Gross vs. U. S. Mtge. Co.*, 108 U. S., 477; *Phil. Fire Ass. vs. New York*, 119 U. S., 110; *Egan vs. Hart*, 165 U. S., 188.)

Answer to Brief on the Motion to Dismiss.

It is of no concern to this Court, how the proceedings of the County and Circuit Courts of Waukesha County, in this case, were conducted, or whether the Louisiana judgment was relied on as an estoppel in those proceedings or not, or whether the matter of estoppel should have been specially pleaded or insisted upon. All such inquiries are irrelevant and out of place; the single inquiry admissible, *at any time*, on this writ of error being, in the language of the statute which shapes the jurisdiction of this Court, whether there is "any right claimed under the Constitution," "in any suit in the *highest court* of a State,

in which a decision in the suit could be had," "and the decision is against the * * * right" (R. S., § 709); in other words, whether any such right was set up by the plaintiff in error, in this case, in the Supreme Court of Wisconsin, and decided adversely to the right by that Court.

But the question how the claim under the Constitution was brought before that Court is one of State law, with which this Court will not intermeddle, it being sufficient to attract the jurisdiction of this Court, that such a question was before the State Court, and so decided there.

But the point taken is not correct, for this Court has held that a former judgment may be introduced in evidence as an estoppel without having been specially pleaded. (*Wash., &c., Packet Co. vs. Sickles et al.*, 24 How., 333; *Southern Pacific Co. vs. United States*, 168 U. S., 1; *Caujolle vs. Ferrié*, 13 Wall., 465.)

It is, also, insisted that the plaintiff in error is estopped to raise the federal question, because, as alleged, she did not insist upon the Louisiana judgment, as conclusive of the matter of domicil, in the County and Circuit Courts of Waukesha County.

But the obvious reply to this position is, that the matter of estoppel is one of *State law*. If, indeed, the State Supreme Court had decided that under the State law, plaintiff in error had lost her right to raise the federal question in that court, the case would then have been analogous to the case of *Eustis vs. Bolles* (150 U. S., 361), where the State Court ruled that the plaintiff in error, who had received money in a proceeding under a State insolvent law, was estopped to assail the constitutionality of that law.

If, however, in that case, the State Supreme Court had passed by the question of estoppel, and decided the case on the federal question alone, could this Court have declined jurisdiction upon the ground of an estoppel based on *State law*, and not noticed by the State Court?

Can this Court, therefore, say to the Supreme Court of Wisconsin that, in denying the federal right claimed by plaintiff in error, it determined a question not properly before it by the State procedure, when properly understood? Surely, this Court has never committed any such invasion of State supremacy, and, it may be safely said, *never will*.

In the face of the fact, that the federal right, now insisted on, is *jurisdictional and permeates the whole case, and must needs have been passed on by the State Supreme Court*, the extraordinary pretension is advanced, that the decision of the right was not necessary to the proper determination of the case, as if the first inquiry of every court was not, whether the matter presented to it for decision is within the circle of its powers.

In the case at bar, all the proceedings in the several State Courts were *coram non judice*, if our contention as to the effect of the Louisiana judgment is correct. The federal question raised is, therefore, of such a character that "*the judgment as rendered could not have been given without deciding it*," to borrow the language of the court in *Eustis vs. Bolles*. (*Supra.*)

The *only* practical issue relevant to the case is that involving the domicil of the decedent, and that issue necessarily includes the question of estoppel based on the Louisiana judgment, which dominates the case.

To cite authorities in support of these elementary principles is unnecessary, because they are ever present to the Court.

But it is said, in Mr. Tullar's brief (p. 3), that this Court has held that it will not notice a federal question which was not the subject of a substantial contention in the Court of first instance and the case of *Cornell vs. Green* (163 U. S., 80) is vouched, in support of the proposition.

That case, however, has no relevancy to the discussion, because it was an appeal from a federal Circuit Court, under the act of March 3, 1891, whereas the case at bar is a writ of error under Section 709, Revised Statutes, which authorizes this Court to review any final judgment or decree of the Supreme Court of a State, *which judgment or decree denies a federal right* claimed by the plaintiff in error. It is, therefore, where the Supreme Court of a State has denied the federal right, that the reviewing power of this Court is called into activity, it being a matter of indifference what the inferior State Courts may have done in the premises. Plainly, then, the case relied on does not hit the point in this case, and requires no further attention.

It may be confidently stated that the four propositions relied on in the brief for the executors and legatees (p. 12), in support of the motion to dismiss, are without merit, for (1) the federal question *does appear in the record*, (2) that question *was decided* by the State Court, (3) the decision of the federal question *was necessary*, and (4) the judgment of the State Court *does not rest on any independent ground of State jurisprudence* capable of supporting it.

It follows, therefore, that the motion to dismiss must be *denied*.

The Motion to Affirm.

This motion is allowable only where it is "*manifest*" that the writ was sued out "for delay only," or "that the question on which the jurisdiction depends is so frivolous as not to need further argument."

There is no conceivable ground to support the contention that the writ was sued out "for delay only," and no attempt is made to show the existence of any such ground.

It must, therefore, be on the other ground that the motion rests.

But if the question involved is "so frivolous as not to need further argument," it is certainly not easy to perceive why so elaborate an argument and so much research have been employed to establish the frivolousness of the question.

The truth is, that the argument on the proposition is a *felo de se*, showing, conclusively, the very opposite of what it was intended to support.

The injustice of allowing the motion is apparent, for to allow it would deprive the plaintiff in error of her right to a discussion of the case at the bar, in the usual way, which was not the intention of the rule.

Here the discussion should close, and would close, but for the misleading character of the argument in favor of the motion to affirm, which we are not disposed to let pass, without a brief refutation.

The principle does not seem to strike the learned counsel opposite, that while there may be an administration in every State where the decedent left assets, there can be but *one domiciliary administration*, and that any contest as to the validity of an administration claiming to be such *must be carried on in the*

court that granted it, and not by setting up a rival administration in some other jurisdiction. This is admitted to be the rule in the case of the probate of a will, why then should it not be the rule in the case of an administration determining the *status* of the decedent's estate, wherever it may be?

The position taken, that the averment of Fabacher's domicil in the petition of plaintiff in error, in the Louisiana proceeding to open Fabacher's succession, was not jurisdictional and not established by the judgment in that proceeding cannot be sustained.

To say that a judgment does not involve a final determination of every matter *in pais* necessary to give the Court jurisdiction, seems like a solecism, and is irreconcilable with the solemn determinations of this Court. (*Grignon's Lessee vs. Astor*, 2 How., 338; *Florentine vs. Barton*, 2 Wall., 212; *Noble vs. Union River Logging R. Co.*, 147 U. S., 165.)

These authorities establish a principle of general jurisprudence which this Court will apply and enforce without regard to the decisions of any State, to the contrary, if there be such.

To sustain their proposition that the Louisiana judgment is not conclusive on the point of Fabacher's domicil, counsel opposite cite, with an air of triumph, the cases of *Beckett vs. Selover* (7 Cal., 233) and *The Succession of Williamson* (3 A., 261), the former of which was OVERRULED in *Irwin vs. Scriber* (18 Cal., 499) and the latter in *Duson vs. Dupré* (32 A., 896, 898). In the latter case, an attempt was made to overturn an administration by a side-wind attack, on the ground that the decedent's domicil, at the time of his death, was the parish of Orleans, and consequently that the open-

ing of his succession in the parish of St. Landry was void: but the Court repudiated the contention, saying:

> No principle of our jurisprudence is more firmly established than the following: Letters of administration make full proof of the party's capacity until they be revoked. They must have their effect, and the regularity of the proceeding on which they issued cannot be examined collaterally.

It is hardly permissible to follow further the irregular discussion of the other side, on the motion to affirm. We are much tempted, however, to enter upon a vindication of the appositeness of the cases we have cited, against the criticisms of opposite counsel, but, under the circumstances, have concluded to let those cases speak for themselves.

Clearly, then, the motion to affirm should be denied.

In the interest of good morals and sound policy, it is to be hoped, that the jurisprudence of the case will justify the reversal of the judgment.

If the judgment is permitted to stand, then will be ensured the consummation of that unholy scheme to deprive Mrs. Thormann, the forced heir, and only living legitimate offspring of Joseph Fabacher, of all participation in his estate, and bestow it upon his concubine and her bastard progeny, that concubine being *his own wife's sister*. If the judgment should be reversed that unclean purpose would be frustrated, for the law of Louisiana strikes with nullity the instrumentality to effectuate it.

Wm. A. Maury,
E. Howard McCaleb,
Counsel for Plaintiff in Error.

Washington, D. C., 1505 Pa. Ave., *January* 20, 1900.

Office Supreme Court U. S.
FILED
DEC 16 1899
JAMES H. McKENNEY,
Clerk.

No. 341.

Appeal from

Brief of Buck for D. C. (mo.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM.

No. 341.

Filed Dec. 16, 1899.

ANTOINETTE THORMANN, PLAINTIFF IN ERROR,

vs.

ANDREW J. FRAME AND MAGDALENA FABACHER AND JACOB FABACHER MINORS, BY D. S. TULLAR, THEIR GUARDIAN *AD LITEM.*

MOTION TO DISMISS AND AFFIRM.

BRIEF AND ARGUMENT IN SUPPORT OF MOTION TO "DISMISS AND AFFIRM."

T. E. RYAN,
Attorney for Executor in Error.
CHAS. F. BUCK,
Of Counsel and on Behalf of Legatees.
D. S. TULLAR,
Guardian ad Litem for Minors in Interest.

DISPATCH PRINT, WAUKESHA, WIS.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM.

No. 341.

ANTOINETTE THORMANN, PLAINTIFF IN ERROR,

vs.

ANDREW J. FRAME AND MAGDALENA FABACHER AND JACOB FABACHER MINORS, BY D. S. TULLAR, THEIR GUARDIAN *AD LITEM.*

MOTION TO DISMISS AND AFFIRM.

To the Honorable the Judges of the Supreme Court of the United States.

And now into this Honorable Court by their undersigned attorneys come Andrew J. Frame, Executor, and Magdalena Fabacher and Jacob Fabacher, minors, by D. S. Tullar their Guardian *ad litem*, Defendants in Writ of Error, and respectfully petition and move this Honorable Court to dismiss this cause on the ground that this Honorable Court, as appears on the face of the Record, is without jurisdiction *rationae materiae* or *personae* for the reasons:

First. That there is not involved in this case any issue of fact or law arising under the constitution or laws of the United States;

Second. That notwithstanding averment in the petition for Writ of Error (*Printed Record page 553*) that there is drawn in question the validity of any authority exercised under the laws of the United States and the decision of the State Supreme Court against its validity, the averment is not justified by the Record; and no such question appears on the face of the Record in any form by pleading or otherwise whatsoever;

Third. That the averment in said petition for writ of error and its repetition in various forms in the assignment of errors (*Printed Record pages 554 and following*) to the effect that the petitioners are advised and believe that the Court failed to give full faith and credit to a certain judgment

rendered by the Civil District Court for the Parish of Orleans Div. B. etc., does not raise any issue under the laws of the United States because it appears on the face of the judgment, that said judgment was limited to the fact of appointment of the plaintiff in error as administratrix of the succession of Joseph Fabacher in the state of Louisiana; and no issue is made anywhere as above set forth by pleading oral or written in the Record that this judgment was conclusive upon all the world or the parties litigant herein upon the question of the last domicile of the deceased; or that there was an adjudication on the question of domicile and that it operated as a bar to the courts of Waukesha County, Wisconsin, to entertain jurisdiction on the said question of the last domicile of the deceased and adjudicate thereon;

Fourth. That such issue was never presented except in argument on the final hearing of the cause in the Supreme Court, and the decision of the Supreme Court while considering the argument did not turn upon any Federal question but the court in express terms found the fact to be that "THE RECORD *(Printed Record page 568)* OF THE LOUISIANA COURT IN EVIDENCE MERELY SHOWS THAT THE CONTESTANT WAS AFTER APPROPRIATE PROCEEDINGS, APPOINTED ADMINISTRATRIX OF THE SUCCESSION OF THE DECEASED, AND THAT THE INVENTORY OF THE ESTATE THERE PRESENTED CONSISTED OF THE TOMB, ETC. THERE WAS NO ATTEMPT IN THAT COURT TO ADJUDICATE AS TO PROPERTY SITUATED IN WISCONSIN NOR AS TO THE DOMICILE OF THE DECEASED" ETC.

Fifth. Such contention, viz: That the judgment of the Louisiana Court appointing Plaintiff in Error Administratrix was in effect an adjudication upon the question of domicile of the deceased is in the nature of a plea of "*res adjudicata*" which should have been specially presented by plea; and such plea or contention is waived and abandoned where the Plaintiff in error herself, in terms, submitted by her pleadings the issue of fact as to the last domicile of the deceased without objection, bill of exception or reservation of any kind to the adjudication of court and jury as an original issue; and the Record shows that when the judgment, on which the contentions of "prior adjudication" was made in argument before the Supreme Court of the State of Wisconsin, was offered in evidence no plea or pretense orally or in writing was made that the object was to sustain a plea of "*res adjudicata*" and there is nothing to show that it was offered for any purpose whatsoever *except as proving facts tending to bear on the inquiry relative to the last domicile of Joseph Fabacher the deceased* then and there on trial before a jury.

And now without waiving the foregoing motion to dismiss

but persisting therein and urging same as well founded, your petitioners and movers availing themselves of the right under Rule 6, Paragraph 5 of the Rules of this Honorable Court, pray to combine with same this their motion to affirm the judgment herein on the ground that even if this Honorable Court should find that the Record shows or discloses that this Honorable Court has jurisdiction, it is manifest that the writ of error was taken for delay only and that the question upon which jurisdiction depends is so frivolous and so manifestly against plaintiffs in writ as not to need further argument.

And in support of this motion and as part thereof movers annex and refer to the printed briefs herewith filed.

Wherefore they pray that the motion to dismiss be granted and allowed and the Writ of Error dismissed for want of jurisdiction; but in the event that said motion be not allowed, that, for the reasons above set forth, the judgment of the lower court be finally affirmed, with costs, etc.; and for such other relief as the nature of the case may require and the law and practice of this Honorable Court permit.

T. E. RYAN,
for Executor—Dft. in Error.

CHAS. F. BUCK,
of Council and on behalf of Legatees, etc.

D. S. TULLAR,
Guardian ad Litem for Minors in interest.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

ANTOINETTE THORMANN, PLAINTIFF IN ERROR,

vs.

ANDREW J. FRAME AND MAGDALENA FABACHER AND JACOB FABACHER MINORS, BY D. S. TULLAR, THEIR GUARDIAN *AD LITEM*.

BRIEF AND ARGUMENT IN SUPPORT OF MOTION TO "DISMISS AND AFFIRM."

To the Honorable the Judges of the Supreme Court of the United States.

I. ON THE MOTION TO DISMISS.

Expanding and elaborating the grounds upon which motion to dismiss Writ of Error in this cause is made, more in detail, we submit,—

First. That there is nowhere in the voluminous Record on file any plea or pleadings, or any note of any plea made orally or otherwise at any time except in argument in the Supreme Court of the State, making or presenting an issue of *res adjudicata*, or contending that the question of the last domicile of the deceased, Joseph Fabacher, had formed an issue in a judicial contention which had been passed upon in proper manner and with proper parties before a court of competent jurdisdiction, in a final judgment; and *Second.* That such judgment is conclusive upon the courts of the State of Wisconsin on the said question of the last domicile of the deceased.

Joseph Fabacher died on the 3rd of March, 1897, while temporarily in the City of New Orleans, leaving and having all of his worldly possessions movable and immovable in Waukesha County, Wis., except a family tomb which he had erected in the City of New Orleans, where he had lived for a long time and where no doubt at the time, he expected to die and be buried. There was some household furniture in a house in the city of New Orleans which was claimed to be his property but which as the record shows never came into the

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

ANTOINETTE THORMANN, PLAINTIFF IN ERROR,

vs.

ANDREW J. FRAME AND MAGDALENA FABACHER AND JACOB FABACHER MINORS, BY D. S. TULLAR, THEIR GUARDIAN *AD LITEM.*

BRIEF AND ARGUMENT IN SUPPORT OF MOTION TO "DISMISS AND AFFIRM."

To the Honorable the Judges of the Supreme Court of the United States.

I. ON THE MOTION TO DISMISS.

Expanding and elaborating the grounds upon which motion to dismiss Writ of Error in this cause is made, more in detail, we submit,—

First. That there is nowhere in the voluminous Record on file any plea or pleadings, or any note of any plea made orally or otherwise at any time except in argument in the Supreme Court of the State, making or presenting an issue of *res adjudicata*, or contending that the question of the last domicile of the deceased, Joseph Fabacher, had formed an issue in a judicial contention which had been passed upon in proper manner and with proper parties before a court of competent jurdisdiction, in a final judgment; and *Second.* That such judgment is conclusive upon the courts of the State of Wisconsin on the said question of the last domicile of the deceased.

Joseph Fabacher died on the 3rd of March, 1897, while temporarily in the City of New Orleans, leaving and having all of his worldly possessions movable and immovable in Waukesha County, Wis., except a family tomb which he had erected in the City of New Orleans, where he had lived for a long time and where no doubt at the time, he expected to die and be buried. There was some household furniture in a house in the city of New Orleans which was claimed to be his property but which as the record shows never came into the

possession of the administratrix, appointed in the City of New Orleans, in *that* capacity. She sold her right, title and interest in it in her capacity *as heir* "to Lawrence Fabacher" at "private" sale. *(Printed Record page 455.)*

On the 27th day of March, 1897, A. J. Frame, one of the defendants in error, presented for probate in the County Court of said County of Waukesha, State of Wisconsin, the last will and testament of the deceased which he alleged had been duly executed in accordance with the laws of Wisconsin; and averment was made that said Joseph Fabacher was at the time of his decease "an inhabitant of the said county of Waukesha," etc. *(See Printed Record page 1.)*

This application was published according to law and set down for Tuesday, May 4th, 1897, for hearing. On said day and date Antoinette Thormann, Plaintiff in Error, duly appeared alleging herself to be under the law of Louisiana the "sole heir" of the deceased (Record page 3) and also setting forth a state of facts which if true would disqualify any and all the persons named in the testament, under the laws of Louisiana to take under the will, and with the express object of having said will and its effects judged according to the laws of Louisiana made issue as to the deceased's last domicile, averring that,—"*continuously ever since 1843 up to and at the time of his death he the said deceased was domiciliated in the City of New Orleans, State of Louisiana, and that as an inhabitant and resident thereof, that this court has no jurisdiction in the probate of said last will and testament and in the settlement or distribution of said estate of said deceased.*"

The will was also attacked on the ground of having been procured by "undue influence" etc., and as "not duly executed in the manner and form required by law."

These latter issues were not seriously urged at any time, and throughout, dealt with in a *pro forma* manner, and do not concern us now.

Thus a distinct and express issue was made upon the question of the domicile of the deceased Joseph Fabacher by the only person on earth, having an interest,—who now and for the first time in the course of this litigation, *in argument*, in the Supreme Court, contends that that one issue which she herself explicitly tendered had been determined by a prior adjudication and the Wisconsin Court had no power to judge on it. A trial was had in the County Court; the Judge of the County Court decided that at the time of his death and some time prior thereto Joseph Fabacher was domiciled in the city of Waukesha, County of Waukesha, State of Wisconsin. The case was tried in the month of August, 1897, and the decision rendered on or about the 1st of September.

In the meantime on the 30th of March, three days after the

Executor had filed the application for probate, Antoinette Thormann had filed her petition in the Civil District Court alleging substantially the same facts as in her petition of "contestation" herein and claiming to be appointed administratrix of the estate of Joseph Fabacher in the State of Louisiana. (See Transcript of this Record being Record of the succession of Joseph Fabacher, No. 52941, Civil District Court for the Parish of Orleans, Division B at pages 498 and following Printed Record.)

It was the usual *ex parte* application made in such cases and notice given by publication to persons desiring to oppose the application to do so within the time fixed. There being no opposition, judgment was rendered on the 30th day of April; four days therefore before Mrs. Thormann filed her "opposition" in the Waukesha court appointing her administratrix. The following is a full text of the judgment:

Letters.

STATE OF LOUISIANA.

Civil District Court for the Parish of Orleans Division B.

Succession of JOSEPH FABACHER No. 52941.

This shall certify to all whom it may concern that on the 30th day of March in the year of our Lord one thousand eight hundred and ninety-seven and the one hundred and 21 of the Independence of the United States of America an application was made to the Honorable Fred D. King judge of the civil district court for the Parish of Orleans Division B by Mrs. Antoinette Thormann, (born Fabacher) praying that she might be appointed administratrix of the succession of Joseph Fabacher.

Now know ye that Mrs. Antoinette Thormann (born Fabacher) has been and she is hereby appointed administratrix of the said succession of Joseph Fabacher, and that she has fulfilled all the requisites of the law.

Witness our hand and seal of the civil district court this 30th day of April in the year of our Lord one thousand eight hundred and ninety-seven and the one hundred and twenty-first of the Independence of the United States.

(Signed) FRED D. KING, Judge.
F. E. PETERSON, D'y Clerk.

A true copy,

F. E. PETERSON, D'y Clerk.

This is the judgment; the scope and effect of which is so well understood now in every state of this Union that the veriest tyro in practice could not be misled; which the plain-

tiffs in error assert determine judicially the last domicile of Joseph Fabacher, deceased, to be in the City of New Orleans, State of Louisiana; that the judgment to this effect is in the nature of a judgment *in rem* binding upon all the world, etc.

This judgment was final on the 30th day of April, 1897; four days before the petition of contestant is filed in the County Court of Waukesha. Yet no reference is made to it, and the issue of "domicile" is made to be tried as an original question of fact and law.

Under the motion to dismiss we submit to the Court,—*First*, that this contention is nowhere properly in the Record; and *Secondly*, that, if it might be held that the mere tender of the Record of the Louisiana Court in evidence brings in the judgment for every conceivable effect that it might have, and so collaterally raise that issue, that the point is in the nature of a plea of *res adjudicata*, and whether it should have been specially plead or not, *it was waived when plaintiff in error herself came into the Courts of Wisconsin*, and, as hereinabove set forth and shown in the Record, made a distinct and specific issue of fact and law between the parties to this suit on the question of the last domicile of Joseph Fabacher.

The case was tried, first before the County Court of the County of Waukesha as above stated; then before the Circuit Court in and for the County of Waukesha, with a jury. In both trials oral and written testimony making up a Record of 500 pages was heard and taken; and never throughout the case, in pleading or in argument, on the charge to the jury, or in exceptions to the findings, was the point ever suggested. It was first urged in argument in the Supreme Court of the State of Wisconsin.

The Record is not perhaps as carefully made up as it should be and we find for instance the exceptions to "findings of fact and conclusions of law" in it not less than three times: at pages 27, 379 and page 345. At page 382 Printed Record, we find the charge of the Judge of the Circuit Court to the jury. It is full and elaborate; goes into every detail of the case, and nowhere is there any point made on the effect of this judgment except in so far as the same may be considered as proving facts tending to show where the domicile of the deceased was. No objections were made at the time to the charge of the court—no request for a charge upon the point now urged; which, if well taken, should have terminated the cause. If the plaintiff thought the point was in the case she should have asked the court to charge that as matter of law the judgment of the Louisiana Court appointing an administratrix to the succession of Joseph Fabacher in the Parish of Orleans, State of Louisiana, was a decision upon the question of domicile conclusive as to all the world, and under the laws

and constitution of the United States binding upon the Courts of the State of Wisconsin.

Without objection, almost by consent, the following propositions were submitted to the jury *(See Printed Record page 386)*:

"The questions of fact submitted to you in this connection for your determination are as follows:

"First. Was the paper-writing presented for proof, allowance and probate as the last will and testament of Joseph Fabacher, deceased, executed in conformity with the provisions of the statutes of this state relating to wills?

"Second. Was the said alleged last will and testament of said Joseph Fabacher, deceased, his own voluntary act and deed, or was it the result and product of undue influence.

"Third. Was the domicile of said Joseph Fabacher, deceased, at the time of his death, the 3d day of April, 1897, at the City of Waukesha, County of Waukesha and State of Wisconsin, or was it at the City of New Orleans, State of Louisiana. And these questions of fact you must determine from the evidence in the case under instructions of the court."

These questions embody the gist, in fact, the entire issue of law and fact tried in the courts of Wisconsin.

We have already referred the Court to the exceptions filed by plaintiff in error to the finding of fact *"and conclusions of law"* after the judgment was rendered. They are elaborate and specifically embodied under seven distinct headings, *(Printed Record 345)* and it is sufficient to state that the point now contended for and first presented to the Supreme Court of the State of Wisconsin in argument, was not made. The point under discussion surely involves a "conclusion of law;" neither trial Court was ever given an opportunity to pass on it.

At page 405 Printed Record, your Honors will find the offer in evidence, of the Record No. 52941, Civil District Court, Parish of Orleans, State of Louisiana, and what transpired in connection wherewith as follows:

"Counsel for Contestant: I offer in evidence the Record in the Succession of Joseph Fabacher together with all the proceedings, No. 52941, Civil District Court, Parish of Orleans, division B.

"Objected to by proponent for the reason that it is an attempt on the part of the contestants to go into the Courts of Louisiana, alleging the domicile of the deceased was in Louisiana, and asking for letter of administration, when she is herself the contestant; in other words making evidence for herself after the death of Joseph Fabacher.

"By the Court: There was some property in that State. They would be entitled to administration upon that. I think we can assume the executor will go down and attend; pre-

sumptively it will give them the right to administration. I will let them put it in.

"Exception taken by proponent."

* * * * * * * *

"Counsel for Contestant: The next part of the Record shows that this administratrix filed a suit and took out what is called a writ of sequestration, claiming the estate, and gave the necessary bond. It shows there was sequestered a piano, table, cover, rocker, three chairs, etc."

"Objected to for the reason that the inventory is entirely an *ex parte* proceeding, not conclusive that those things were the property of Joseph Fabacher, and not conclusive in regard to any fact except that an administrator or the person pretending to act had taken an inventory and claims it was properly done."

"By the Court: *It is only received for this purpose—as tending or having a bearing, as they claim, on the question of domicile, in that it appears there were a great many household articles, etc., naturally used by a man who had a home there in New Orleans—the only object I will consider it for.*"

Your Honors will perceive that in the offer by counsel for plaintiff in error not a word is said on the question of domicile or that the Record and judgment were offered with the all controlling purpose embracing the whole case, as having the effect of barring further proceedings in the courts of Wisconsin and divesting them of jurisdiction on the question of domicile which it is now claimed was settled in that Record and by that judgment. And nothing said by them, although the Court distinctly admitted the Record "as having a bearing" as they claim, "*on the question of domicile.*"

We repeat therefore that the contention now made that the Court should have *ex proprio motu* and on its own suggestion without any claim or pretense in that respect by the plaintiff in error, arrested all further proceedings and held the question before it to have been previously determined,—should receive no sanction from this Court; and it should be held that such point should have been specifically presented in some form for the court of original jurisdiction to have acted upon it. Or, in any event, when the parties themselves made the issue of fact, tried it, and submitted it to a jury for final judgment, they should be held to have waived the point which they now make and must accept the consequences of the judgment which they themselves provoked.

Mrs. Antoinette Thormann, plaintiff in error, is the only person on earth who had any interest in the question before the court and when she herself as shown by her own pleadings and throughout the progress of two protracted and arduous trials asserted as an original and independent issue the fact

to be that Joseph Fabacher was domiciled in New Orleans, she cannot now be heard to say that that issue had been adjudged in her favor by a prior judgment in another state to which the defendants in error were neither constructively nor actually parties.

We submit therefore on this point, on the motion to dismiss, that the Federal question asserted in the petition for writ of error and assignment of errors, is not in this Record.

Second. But it will be contended by counsel for plaintiff in error that the Supreme Court of the State of Wisconsin did consider the point to be in the Record, passed upon it, and decided it adversely to their contention. But the contention obviously rests upon baseless *superstructure* having no foundation in any part of the Record, nor in the decision of the State Supreme Court. True the Supreme Court of Wisconsin, urged by the earnest insistence of counsel, *in argument*, discusses it; but manifestly, the decision does not involve a refusal to give full effect and validity to a judgment rendered in a Louisiana Court, determining the question of the domicile of Joseph Fabacher at the time of his death. On the contrary the Supreme Court found the fact to be *that no such judgment involving an issue of domicile had ever been rendered; that indeed no such issue was presented in the Record relied on.*

The opinion of the Supreme Court of Wisconsin is found at pages 560 and following, Printed Record. That portion of it which relates to this particular contention begins near the foot of page 566.

The Chief Justice, being the organ of the Court, with almost a degree of sensitiveness, resents the imputation that it might not be willing in a proper case as the Supreme Court of Wisconsin had always been, to give full faith and credit to public acts, records and judicial proceedings in Louisiana as well as every other State in the Union (see foot of page 567 *Printed Record.*) And decisions are cited in support of this very proper position. As the Court says, "These cases are cited to show that it has been and is the settled purpose of this Court to give full faith and credit to the public acts, records and judicial proceedings of other states. But to entitle a judgment under a court of another state to such full faith and credit in an action or proceeding *in rem* like the case at bar it must appear from the Record thereof that the Court rendering the same had jurisdiction of the subject matter or the proceedings (Authorities cited.)

Thus it is held in one of the cases cited that records and judicial proceedings of each state affecting property within it have in every other state a force and effect which they possess in the state of their origin; but as to similar property or estate situated in another state, they have no greater or

other force than similar records or proceedings in the courts of that state, citing *Robertson* vs. *Pickerell*, 109 U. S. 608.

"The Record of the Louisiana Court in evidence merely shows that the contestant was after proper proceedings appointed administratrix of the succession of the deceased and that the inventory of the estate thereof presented consisted of a tomb, etc. There was no attempt in that Court to adjudicate as to property situated in Wisconsin, *nor as to the domicile of the deceased;* that Court it may be conceded had jurisdiction as to any tangible property actually located in that state."

From this presentation of the case, and which springs logically from the nature of the judgment offered in evidence, is it not manifest that the Supreme Court of the State of Wisconsin did not refuse to give full faith and credit to a judgment by a Louisiana Court but it found the fact to be that while the judgment offered in evidence was perfectly valid to the extent that it appointed an administratrix to the property of the deceased in Louisiana and that the Court of Louisiana had full power to adjudge regarding such property, that there was not presented to the Court in Louisiana and was not adjudicated upon, the question of the last domicile of the deceased, nor any question affecting the disposition of property left by the deceased in the State of Wisconsin.

The jurisprudence of this Honorable Court leaves no room for doubt on the propositions submited, viz:

1st. That the Federal question should appear "in the Record."

2d. That it was decided by the Court.

3d. That the decision on the Federal point was necessary.

4th. That the judgment (of the State Court) was not placed on some other ground on which it might stand irrespective of the Federal question.

We refer the Court to the following cases as establishing these principles:

In the case of *White* vs. *Leovy*, 174 U. S. at page 95, this Court said: "It is manifest no Federal question was passed on by the Court. Its decision was upon an independent ground involving no Federal question and of itself sufficient to support the judgment. . . . . This was but the interpretation of written instruments, and if it were even apparent to us to be wrong, which we cannot say, we should nevertheless be without power to review it." And the Court quotes its decision in *Remington Paper Co.* vs. *Watson*, 173 U. S. 443, affirming *Eustis* vs. *Bolles*, 150 U. S. 361 and 370 where the Court said: "That when we find it unnecessary to decide any Federal question and when the

State Court has passed its decision on a local or state question our logical course is to dismiss the writ of error."

This latter case, *Eustis* vs. *Bolles*, is strongly in point, not only by reason of the principles and rules of this Court there laid down but by reason of an essential similarity in many respects. For instance we find in this case among other things, that even if it might be argued with some show of reason that a judgment appointing an administratrix of a deceased person to administer property left by the deceased in a particular state, determines the question of domicile, and that such judgment would be binding on the issue of domicile on the courts of other states, that the plaintiff in error had estopped herself from raising that issue, at the last moment in the Supreme Court of the State of Wisconsin when she herself by her own pleadings had made an issue of fact on such question of domicile, and which was tried there by the tribunal of original jurisdiction and decided against her.

In this case of *Eustis* vs. *Bolles*, the Supreme Court of Massachusetts had decided that a creditor of an insolvent estate who had proved his debt in insolvency, had thereby estopped himself from raising the Federal question, "that the act of the Massachusetts legislature under which the insolvency proceedings were had impaired the obligation of contracts" in violation of the Federal constitution. And this Court dismissed the appeal, saying among other things, besides what is above quoted: "That to give this Court jurisdiction of a writ of error to a State Court it must appear affirmatively not only that a Federal question was presented for decision by the State Court but that its decision was necessary to the determination of the cause, and that it was decided adversely to the party claiming a right under the Federal laws or constitution; or that the judgment as rendered could not have been given without deciding it. And the Court goes still further—It is said: "Where the Record discloses that if a Federal question has been raised and decided adversely to a party claiming the benefit of a provision of the constitution or laws of the United States, another question not Federal has been also raised and decided against such party, and the decision of the latter question is sufficient notwithstanding the Federal question to sustain the judgment, then this Court will not review the judgment."

These "rules" there laid down are but a repetition and affirmance of the jurisprudence of this Court long since established and always adhered to, to the effect, "that where the decision of the State Court rested on a non-Federal question, this Court has no jurisdiction though there may also be a Federal question."

Adams & Co., et als., vs. *R. R. Co.*, 112 U. S. 123.
Crosby vs. *City of New Orleans*, 108 U. S. 105.
Kennebek R. R. Co. vs. *Portland R. R. Co.*, 14 Wall. 23.
Boughton vs. *Exchange Bank*, 104 U. S. 427.

"The allegation in the petition for writ of error that a Federal question is involved will not give jurisdiction, if in fact such question does not appear in the Record."—*Atty. General* vs. *Meeting House*, 1 Black, 162.

This Court must be clearly informed that a Federal question was presented for adjudication and decided by the State Court, otherwise it will not take jurisdiction. And this information must come to it from the Record itself.

In the case of *Susquehannah Boom Co.* vs. *West Branch Co.*, 110 U. S. 57, the Court said:

"Judgments of State Courts can be reviewed here only when the Federal question involved is raised in a manner to enable the Court by law to see that such question is necessarily involved in the decision. It is not sufficient to give this Court jurisdiction that the Federal question is raised by petition for a rehearing."

In *Warfield* vs. *Chaffe*, 91 U. S. 690:

"Where the Record does not show that a Federal question was raised though the petition for allowance of the writ of error alleges that such a question was relied upon, this Court has no jurisdiction. It must appear in the Record."

And finally in *Bowling* vs. *Lersner*, 91 U. S. 594:

"This Court cannot re-examine the judgment or decree of a State Court simply because a Federal question was presented to that Court for determination. It must appear that such a question was in fact decided or that its decision was necessarily involved in the judgment or decree as rendered.

The "Federal" question (?) was not brought in as we have shown until the argument of the case in the State Supreme Court and rests solely on a judgment appointing an *administrator* in Louisiana; which judgment was offered and received only in as far as tending to show facts bearing on the inquiry as to the last domicile of the deceased, and the Supreme Court of the State of Wisconsin taking note of the *argument*, answered it not by refusing to give the *judgment* effect, but by finding and announcing the fact to be that the question of the last domicile—which *it* was called on to decide, *was not an issue in the proceedings in which that judgment was rendered and was not concluded by that judgment.*

We respectfully submit therefore that the Record does not present a single one of the various conditions on which the jurisdiction of this Honorable Court to review the decision of a State Court, arises; and accordingly we pray the Court to maintain the motion to dismiss the case.

ARGUMENT ON THE MOTION TO AFFIRM.

Following upon what we firmly believe to be a complete demonstration—that this Court has no jurisdiction in this cause—it seems somewhat of a paradox to urge a motion "to affirm."

Much that might be said in support of the motion to affirm only emphasizes the argument in support of the motion to dismiss.

The bare statement of the proposition submitted on which the jurisdiction of this Court depends developes the meagre thread on which it hangs, in all its baldness.

As a matter of pleading the Court will find nothing. As evidence your Honors will find the judgment above referred to, Printed Record pages 498-499, with a ruling by the Court, at page 405, when it was offered "that that Record is admitted as showing facts tending to affect the issue of domicile" and no pretense made that that judgment concluded the inquiry on the issue of domicile—the only point of contention in the trial.

Looking at the decision of the Supreme Court of Wisconsin we find that it held that there was no adjudication on the issue of domicile in the Louisiana Court; that that Court simply being advised that there was property within its jurisdiction, appointed an *administratrix* to take charge of it, etc.

The laws and statutes of Louisiana are in evidence; the entire civil code of Louisiana was offered (*Printed Record page 493*); the Supreme Court of Wisconsin was therefore in a position to decide for itself what the "force and effect" under the laws of Louisiana, of such a judgment is—and it has said the issue of domicile of the deceased was not involved.

In order to have a tangible proposition before us therefore on the motion to affirm, we must assume that this Honorable Court will go behind and beyond that part of the decision of the Supreme Court of Wisconsin, which distinctly announces that it found in the Record no evidence of any judgment which passed on the evidence of domicile, and decide,

First. That there is in the Record proof of a judgment of a Louisiana Court determining the question of fact, of the last domicile of the deceased;

Second. Determining it in a manner to preclude the Wisconsin Court from entertaining and passing on any contention in regard to it as between the parties now before the Court.

Really as above stated, these views but confirm the contention that there is no "Federal question" in the case.

Setting all this aside the question urged is that a judgment of a Louisiana Court where it is conceded some property was found belonging to the deceased Joseph Fabacher appointing an administratrix to his estate (?) is a judgment *in rem* determining by implication the "last domicile" of the deceased as to all the world and precluding any further inquiry as to that fact in a proceeding instituted in the Courts of the alleged last domicile of a deceased in another state, for the purpose of obtaining probate of a will alleged to have been executed in accordance with the laws of the said state of last domicile!

We respectfully submit that this proposition, in the language of paragraph 5, rule 4, of this Honorable Court, is "so frivolous as not to need further argument."

The scope and effect of such judgments appointing administrators to deceased persons—wherever there is property,—is so well understood generally that nothing but the fact that counsel venture to seriously urge it to this exalted tribunal invests it with a surrounding to elicit like serious response.

Equally well understood is what the law means when it speaks of probate proceedings as being *in rem*. The *res* is the property of the estate: and the property being within the jurisdiction of the Court its sale or disposal by the administrator according to the law gives valid title. The appointment of the administrator is final and conclusive and his lawful acts binding on everbody. *Waple's* "proceedings *in rem:* Chapter,—"Probate Proceedings," Section 563, page 702.

Plaintiff in error may and will contend and it is the *soul* of their contention that the domicile of the deceased is essentially involved in a judgment appointing an administrator; if the court of "last domicile" were the only court having jurisdiction to appoint, —it might be argued with plausibility that domicile being essential to jurisdiction the judgment, by implication, determined it.

But in the first place domicle is not a factor; and in the second place, if it were, "jurisdictional facts" are always open to inquiry, Bigelow on Estoppel, 3rd Ed. 227, 235; Succession of Williams 3rd Ann., 261; Freeman on Judgments, Sec. 562 and 563; Rohrer on Interstate Law, page 107.

The proposition submitted seems literally too plain for discussion. When we reflect for an instant, on the far reaching effect such a conclusion would have, that the first creditor or any person having any interest rushing into any court of any state where a deceased person may have left an insignificant amount of property, by having himself appointed administrator for this property could conclude the whole world on the question of the "last domicile" of the deceased,—we must

understand at the same time, the utter futility of the contention. It is the "common law" of all civilized countries, which all states recognize, that personal property passes according to the laws of the place of domicile of the deceased. Then if the proposition contended for were true, it would be in the power of any one "taking time by the forelock" and having himself appointed administrator on an *ex parte* proceeding, to fix the domicile of the deceased, and thereby determine the law of descent and power of disposal by the deceased, of his own property.

Again, an administrator appointed by the Courts of any state has absolutely no power beyond the limits of that state; he is a mere officer of the Court to hold the property and collect the assets of the estate found within the jurisdiction of the Court and his power stops at the state line. This is an elementary proposition.

With what propriety or logic can it be contended that the appointment of such an officer establishes the domicile of the deceased as to all the world when it does not even give him control of any property or assets situated out of the limits of the state from the Courts of which he holds his appointment?

We hardly deem it necessary at this time to submit to your Honors the result of any elaborate research in support of the negative of a contention as original as it is impossible. It has however been decided that even a judgment probating a will does not determine the domicile of the deceased. We quote from page 149, Vol. 12, American & Eng. Encl. of Law:

"*Probate Decrees.*"—A decree of probate admitting a will to record does not conclusively establish the domicile of the testator as against all persons. *Whicher* vs. *Hume*, 7 H. L. Cas. 124; *DeMora* vs. *Concho*, 29 Ch. D. 268 (C. A.) It establishes the genuineness of the instrument as against the whole world. *Newman* vs. *Waterman*, 63 Wis. 612. But not the testamentary capacity of the testator, except as between the parties. *Brigham* vs. *Fayerweather*, 140 Mass. 411.

"The decrees of foreign Probate Courts within their jurisdiction are conclusive upon the admissibility of the instrument to probate and of the title derived from the issuance of letters testamentary and of administration. Big. on Estop. (4th Ed.) 237, and cases cited; *Williams* vs. *Saunders*, 5 Coldw. Tenn. 60; *Tomkins* vs. *Tomkins*, 1 Story U. S. 547; *Nelson* vs. *Oldfield*, 2 Vern. 76.

Bigelow also, at pages 13, 170 and 172, having laid down the general rule that the decrees of Courts of Probate and of like Courts upon the validity of testaments or upon the grant of letters of administration and like acts are conclusive when coming within its jurisdiction, qualifies at page 187 by saying:

"That an adjudication of a foreign Court (like that of a domestic) is conclusive only of matters without which the judgment could not have been pronounced." In other words if a judgment appointing an administrator could have been rendered without entering upon the question of the last domicile of the deceased, such judgment is not conclusive upon the question of domicile.

Finally on this point we submit to this Honorable Court Art. 935 of the Revised Civil Code of Louisiana which shows how and where successions are opened, and clearly lays down that they may be opened at places other than the last domicile of the deceased, *Art. 935 Revised Civil Code:* "The place of the opening of successions is fixed as follows:

"In the parish where the deceased resided, if he had a fixed domicile or residence in this state.

"In the parish where the deceased owned immovable property, if he had neither domicile nor residence in this state, or in the parish in which it appears by the inventory his principal effects are, if he have effects in different parishes.

"In the parish in which the deceased has died, if he had no fixed residence, nor any immovable effects within this state, at the time of his death."

This is the law of Louisiana which the Supreme Court of Wisconsin had before it when it correctly stated the import and the scope of this judgment appointing the Plaintiff in Error administratrix of the Succession of Joseph Fabacher in New Orleans, La.

Is not the Article so plain that he who runs may read?

The only thing we find in it on the question of domicile is in the first paragraph—the succession is opened,—"In the parish where the deceased resided if he had a fixed domicile or residence" etc.

An affirmation fraught with the negative that if he had no "fixed domicile" it might be opened elsewhere. And indeed the Article so provides.

If then, an administration may be founded wherever there is property,—without reference to "domicile" the argument that the "domicile" is involved and passed on by necessary implication, manifestly falls.

This question—as to the effect and scope of a judgment appointing an administrator—can be analyzed from an indefinite number of views, all illustrating its "limitations." For instance, the subsequent discovery of a will means the revocation of the administration proceedings.

Watson vs. *Glover*, 77 Ala. 233.
Kitridge vs. *Folson*, 8 N. H. 98.
Patton's Appeal, 31 Pa. St. 465.

To state another form:—instead of a judgment appointing an administrator being conclusive on the question of domicile —it is absolutely conclusive of nothing except the fact of appointment, and the appointment can even be collaterally questioned when the jurisdiction of the Court is involved.

Authorities are numerous, we submit as most directly in point:

Succession of Williams, 3 La. Ann. 261.

Beckett vs. *Selover*, 7 Cal. 233, *et seq.*

In both these cases the deceased died in the state where the Succession was opened:—

In both, the decedant had a fixed residence or domicile in a particular county (parish) in the state; in both so far as the state law goes the succession should have been opened in the county of domicile; in both it was opened and an administrator appointed in a county other than that of the domicile; in both, in collateral proceedings, these appointments were held null and the administration transferred or rather assumed by the Court of domicile.

Now the application: If the contention of plaintiff in error in this case is correct it must have followed that the judgment first rendered included and concluded the question of domicile; at least until set aside by direct proceedings assailing the jurisdiction of the Court.

The California case reasons out the situation so elaborately and so aptly that we quote from it as follows, page 23:

"An important controversy arose and the main contention was, whether the petition having stated the residence of the deceased its action in appointing the administrator judicially established the fact which could not thereafter be questioned in a collateral proceeding."

"The propo-ition is stated as follows by counsel: "*The allegation in the petition gave the Court jurisdiction, and it makes no difference whether the facts be true as alleged or not; the fact of residence is a jurisdictional fact in pais; and the Court necessarily passes upon and adjudicates said facts, and its decision, right or wrong, is conclusive in a 'collateral proceeding.'*

"The preponderance of authorities would seem to be clearly against the position of defendants counsel.

"No case, it is thought, can be found where administration was granted by a Probate Court of a wrong county, however regular may have been the proceedings, and those proceedings sustained anywhere, even when *collaterally* (Court's italics) 'assailed.'

"The reason upon which this doctrine rests would seem to be ample. It is the object of the law, that administration should never be granted until the death of the person, and

then only one administration within the state. The law is compelled to adopt some rule for determining where this grant should be made, and as the deceased could not have been a resident of two or more countries at the same time, the law makes his residence at the time of his death the test to determine the place where the grant should be made. These two facts must be alleged in the petition *and they must also be true in point of fact*, and if they do not co-exist in point of fact, the proceedings are utterly void; and the decision of the Probate Court on these jurisdictional facts is not conclusive upon any one not actually before the Court because the Court can compel no one to appear before it."

And at page 237:

"These proceedings are summary and special and must be in strict conformity with the law. It is apprehended that no one would insist that a judgment of administration before the death of a person, however regular could be sustained anywhere; 9 Texas R. 13: The decision of the Probate Court, that the man was dead would certainly not be conclusive against him; and the fact of residence is of equal importance to give the particular Court jurisdiction and the decision of one point is no more conclusive than the decision of the other."

It can be conceded in regard to both these cases that the Courts held that the appointment, made by Courts of a county other than that of domicile, were null and void; this would imply that "domicile" gave jurisdiction.

The answer is 1st. That the decisions involved conflict between Courts in the same state and the rule being that there can be but one administration in every sovereignty—if the deceased had a domicile within its territory—his succession as to that sovereignty must be opened at the Courts of domicile.

What we emphasize in these decisions is that they both directly negative the proposition contended for by Plaintiff in Error.

If a judgment appointing an administratrix in Louisiana is conclusive on the question of domicile—to bar inquiry on that in another state it can only be because such judgment is conclusive on that issue in the state where rendered; it is not expected that the Courts of Wisconsin should give a greater effect to a judgment rendered in Louisiana than it has in the state where rendered.

On this theory in the Succession of Williams, for instance, 3 La. Ann. 24, the judgment appointing Mrs. Williams administratrix of the estate of her husband in Livingston Parish should have been held to have determined the domicile of the deceased to be in that parish—at least until rescinded by a

"direct action" and have precluded the second appointment. But the Court,—as in the California case, attached no significance to the first appointment and acted on the second application in the parish of domicile without regard to it; precisely as we are now endeavoring to probate the will of the deceased in the Courts of the state of his last domicile.

These cases are direct in point and absolutely conclusive. To the same effect are *Garrett* vs. *Boenig*, 68 Fed. Rep. 51 and *Fletcher* vs. *McArthur*, 68 Fed. Rep. 65.

We think the foregoing, perhaps too excessive detail, covers, what should be said in this cause; yet this presentation is not entirely complete without something by way of anticipation on the line of argument we have reason to believe will be followed by the other side, and on the authorities which we may assume they will cite.

If we may be permitted to assume that counsel for Plaintiff in Error will continue on the lines of argument developed heretofore we may also know on what authorities they rely.

A simple inspection of the cases on which they have heretofore relied will expose the fallacy on which the whole argument is based.

The main cases relied on are:

Holmes vs. *Oregon & Cal. R. R. Co.*, *5th Fed. Rep. 523.*

Garret vs. *Boeing*, 68 Fed. Rep. 51.

Simmonds vs. *Saul*, 138 U. S. 439.

And two Louisiana cases: *Dusen* vs. *Dupre*, 32 La. Ann. 896 and *Cravenburg* vs. *Bradford*, 44 La. Ann. 418.

What do these cases decide? each and every one?

That the property of a succession is the *res:*

That such property sold under a proper proceeding by an administrator, confers title as to all the world which cannot be questioned collaterally nor perhaps directly, nothing more.

Simmonds vs. *Saul*, 138 U. S. 439, seems to be mainly relied on.

In that case the Court distinctly recognized (see syllabus) —the principle cited by us from Rorer, that "a judgment is only conclusive as to matters expressly decided or as to matters necessarilly implied."

And what was the issue in that case? The validity of a title to land acquired at a probate sale made by an administrator, under a special statute allowing a somewhat summary mode of proceeding in successions whose assets are less than $500 in appraised value.

The Court decided that under that statute an administrator could be appointed without bond; that the estate could be administered summarily and these "jurisdictional facts"

appearing in the Record, a sale by such an administrator conferred a valid title.

The case of *Garrett* vs. *Boeing*, 68 Federal Reporter 51 cited by counsel for defendant in support of the main proposition that the judgment of the Louisiana Court appointing this contestant administratrix is conclusive on the question of domicile not only absolutely does not touch upon that question but as far as it implies any effect to be given to the probate proceedings to the detriment of persons not party to them, is absolutely and distinctly against the proposition in support of which it is cited. It merely applies the doctrine of *Simmonds* vs. *Saul*, and holds that a sale by an administrator, jurisdictional facts appearing on the Record, cannot be collaterally attacked.

The very interesting case of *Holmes* vs. *Oregon and California R. R. Co.*, cited from 5th Federal Reporter, at page 523, also does not support the theory for which it is invoked. On the contrary it is in itself authority and cites authorities distinctly in support of the proposition that even the probate of a will while the jurisdiction of the Court to probate may be assumed, is not conclusive on the question of domicile. The case sprang from the construction of a statutory provision in the State of Oregon, to the effect that certain Courts had the exclusive power to grant letters of administration upon the estate "of a person who was or immediately before his death, was, an inhabitant of the county in which the Court is held. Under this statute it was held that a decree granting letters of administration by which it appears to have been adjudged upon proper petition that the deceased was an inhabitant of the county under the terms of the statute, was held conclusive as to the validity of the appointment and letters granted by the Court of any other county in the same state were held to be null and void. It appears from the decision at page 526 that in the discussion or argument of the case the administrator appointed in the last proceedings raised the question of domicile but the Court distinctly eliminated the issue by saying that "inhabitancy" and "domicile" are not equivalent terms and the question of domicile is not involved in the question whether a person be an "inhabitant" of a particular place. The distinction between this case and the proposition contended for by counsel for defendant is obvious. This is only the case of *Beckett* vs. *Selover*, 7 Cal. and Succession of Williams, 3 La. Ann. over again with the fact expressly emphasized, that the domicile of a deceased person is not involved in the appointment of administrators.

Nor do the Louisiana cases cited advance the situation for Plaintiff in Error.

They are mere repetitions of the universal principle upheld

in *Simmonds* vs. *Saul*. The syllabus of the case in 32 Ann. *Dusen* vs. *Dupre*, is "The legality of the appointment of a curator to a succession cannot be "inquired into collaterally as letters of administration make full proof of his capacity until his appointment is cancelled in a direct action." This is conceded to be good law—it is universal, but does not touch the question of domicile.

The case of *Grevenberg* vs. *James L. Bradford*, 44 Ann. 418, affirms what has been herein above stated, "That the order of sale of a Probate Court having jurisdiction protects the purchaser; he need not look beyond that decree."

Incidentally the case in 32 Ann., above cited and the case of *Simmonds* vs. *Saul*, in 138 U. S., are referred to by the Court.

As embodying a complete *resume* of the jurisprudence or rather of what the cases relied on by Plaintiff in Error establish and what they do not establish, we present *in extenso* the syllabus of *Grevenberg* vs. *Bradford*, 44 La. Ann. 418, as follows:

1. "A purchaser at a judical sale is not bound to look beyond the decree recognizing its necessity. The jurisdiction of the Court is an essential inquiry, but the truth of the record concerning matters within its jurisdiction cannot be disputed.

2. "A purchaser under a decree of a Probate Court is bound to look to the jurisdiction of the Court granting the order of sale. Such order is to be received as conclusive, and it is not to be impeached from within, but it is impeachable from without.

3. "A judgment, sentence, order or decree passed by a competent jurisdiction, which creates or changes a title, or any interest in an estate, is not only final as to the parties themselves and all claiming under them but furnishes conclusive evidence to all mankind that the right or interest belongs to the party to whom the Court adjudges it." Where in any of these cases do plaintiffs in error find that it has ever been held that a judgment appointing an administrator, *fixes* the *domicile* of the deceased for all purposes and against all the world.

Indeed, if this Honorable Court should take the view that it must go into the Record and beyond the "findings" of the Supreme Court of Wisconsin to the effect that in the proceedings in which Antoinette Thormann was appointed administratrix the issue of domicile was not made etc, and judge the effect of these proceedings as a question to be determined by this Court, then we submit to your Honors that under every principle of the American law of administration of the

estates of the dead, the proceedings instituted in the Louisiana Court by the Plaintiff in Error and her appointment as administratrix are absolutely null and void.

A succession is opened where the deceased had his domicile, or where there is property found subject to administration.

On the 30th of March, when Antoinette Thormann filed her petition in New Orleans, the petition for probate of the will had already been filed in the Wisconsin Court.

The domicile is conclusively established to have been in Waukesha.

Did the deceased have property in Louisiana subject to administration? No. Nothing is inventoried but a tomb, and that by express law is not property, not in commerce, and which can not be sold or mortgaged for debts, and obviously therefore can not serve to fraud administration.

Section 386 Revised Statutes of Louisiana provides:

"All public cemeteries for the purpose of interment with the monuments erected thereon, whether owned by religious or charitable corporations or associations, by municipal corporations *or by individuals*, shall be forever exempt from taxation and from seizure and sale for debt, and shall never be susceptible of mortgage, whether legal or conventional.

Woerner, in "The American law of Administration," 2nd Ed, Vol. 1, Sec. 204, an able and exhaustive treatise, discusses how and when and under what conditions administration may be had and states the general proposition thus:

"The rule in America is universal, that administration may be granted in any state or territory where unadministered personal property of a deceased person is found, or real property subject to the claim of any creditor of the deceased; and that probate of the will of any deceased person may be granted in any state where he leaves personal or real estate."

And carrying out the logic to its proper results we find Sec. 205 page 471. That an administration by a court of a state of which the deceased was not a resident, is an absolute nullity unless there was property in the jurisdiction of the court.

To the same effect see *Fletcher* vs. *McArthur*, 68 Fed. Rep. 65; *Christy* vs. *West*, 38 Iowa 285; Rohrer on "Interstate Law" pp 249, 332.

See also *Atkinson* vs. *Rogers*, 14 La. Ann 633.

Possibly it is piling Pelion upon Ossa; possibly our zeal for our client and our sense of duty to the Court have impelled us to go into unnecessary details over old familiar ground, discussing propositions which ordinarily no one disputes, citing precedents where there has never been a contention, but we have done this to show that there is no question

"needing discussion" rather than *in* the discussion of the question.

We venture humbly to believe that this great tribunal will indeed declare that the proposition (in view of the law so well understood which defines how the estates of deceased persons in one or more states shall be administered) that an *ex parte* judgment of a court, even admitted to have jurisdiction by reason of property found within its control, appointing an administrator, in one state, is a judgment *in rem* as to the domicile of the deceased, binding on the world and conclusive to bar inquiry as to the facts in a court of another state, incidental to an application for the probate of the deceased's last will and testament, is so manifestly against the unbroken current of law, reason and established jurisprudence as not to "need further discussion;" and that a judgment bringing no other issue to this Court for adjudication should be summarily vindicated by affirmance.

And therefore we respectfully pray, if the motion to dismiss be not allowed, that the motion to affirm be maintained and a judgment of affirmance granted accordingly.

T. E. RYAN,
for Executor—Defendant in Error.

CHAS. F. BUCK,
of Counsel and for Legatees, etc.

No. 341.

FILED
DEC 27 1899
JAMES H. MCKENNEY,
Clerk

SUPREME COURT OF THE UNITED STATES.

Brief of Tullar for D. S. (mo.)

OCTOBER TERM 1899.

No. 341.

Filed Dec. 27, 1899.

ANTOINETTE THORMANN, PLAINTIFF IN ERROR,

vs.

ANDREW J. FRAME AND MAGDALENA FABACHER AND JACOB FABACHER, MINORS, BY D. S. TULLAR, THEIR GUARDIAN *AD LITEM*, DEFENDANTS IN ERROR.

BRIEF AND ARGUMENT OF THE ABOVE NAMED GUARDIAN *AD LITEM*, IN SUPPORT OF MOTION TO DISMISS THE WRIT OF ERROR.

D. S. TULLAR,
Guardian ad litem for Magdalena Fabacher and Jacob Fabacher, minors interested.

DISPATCH PRINT, WAUKESHA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM 1899.

No. 341.

ANTOINETTE THORMANN, PLAINTIFF IN ERROR,

vs.

ANDREW J. FRAME AND MAGDALENA FABACHER AND JACOB FABACHER, MINORS, BY D. S. TULLAR, THEIR GUARDIAN *AD LITEM*, DEFENDANTS IN ERROR.

BRIEF AND ARGUMENT OF THE ABOVE NAMED GUARDIAN *AD LITEM*, IN SUPPORT OF MOTION TO DISMISS THE WRIT OF ERROR.

To the Honorable, the Judges of the Supreme Court of the United States.

Now come the above named defendants in error Magdalena Fabacher and Jacob Fabacher, minor children of Joseph Fabacher, deceased, and appearing herein by D. S. Tullar, their guardian *ad litem*, submit the following:

[illegible] *em* fully concurs in and hereby adopts [illegible] t of the learned counsel for the executor [illegible] herein in support of said motion to dismiss, [illegible] hereby further concurs in and adopts the brief and argument of said same counsel in support of the motion to affirm.

In addition to the brief and argument so concurred in and adopted, said guardian *ad litem* hereby further submits:

The place of domicil of the deceased testator, Joseph Fabacher, at the time of his death, has been three times fully tried and determined by the State Courts in

Wisconsin. All parties interested were there before the Wisconsin Courts, fully represented by counsel, and the main question there litigated was as to the place of domicil of Joseph Fabacher at the time of his death. It was in and by said Wisconsin Courts, upon each of said three trials, judicially determined and adjudged that the domicil of Joseph Fabacher, at the time of his death, was at Waukesha, Wisconsin.

At the trial in the lower Courts in Wisconsin counsel for plaintiff in error offered in evidence a copy of a judgment of the Civil District Court of the Parish of Orleans, Louisiana, appointing plaintiff in error, upon her *ex parte* application, as administratrix of the succession of Joseph Fabacher deceased. Also copy of inventory and writ of sequestration from such Court. (Printed Record, pp. 498 *et seq.*) The offer of this evidence was made and the copies of said documents received in evidence for the sole purpose as having a bearing upon the question of domicil of the testator. No other object was claimed by counsel in the offer of such evidence in the trial Court. They first raised the point before the Supreme Court of Wisconsin, in their brief in that Court on appeal, that full faith and credit had not been given to such Louisiana judgment by the Wisconsin trial Court. This point had never been previously raised in the cause, either by plea, offer or objection.

In *Hanley* vs. *Donoghue*, 116 U. S. page 6, this Court holds that upon a presentation of a judgment rendered in one state to be given effect in another state, the effect to be given to such judgment must be determined by the laws of the state in which it was rendered; that this is matter of fact not to be judicially noticed without allegation and proof.

This seems to make conclusive and unanswerable our contention that some special pleading, declaration or offer should have been made in the trial Court based upon the fact of the existence and effect which such judgment has under the laws of the state where rendered. But conceding again that special pleading was not required, the fact remains that there is no evidence in the record to establish what the effect of such a judgment is in the State of Louisiana, except as that effect may be inferred from Art. 935 Revised Civil Code of Louisiana, defining where a succession may be opened.

True, the entire Civil Code of Louisiana was offered in evidence, but that code does not provide for the modes of practice, nor determine the effect to be given to judgments, nor regulate their execution. It does, under the provisions regarding successions, define the powers and duties of administrators. But there is nothing contained therein providing that a judgment appointing an administratrix deter-

mines any issue as to the actual fact of the place of domicil of the deceased.

And in this connection we further insist that the appointment of an administrator in Louisiana, in no sense involves the question of domicil of the deceased, and therefore the judgment of the Parish Court of Louisiana appointing the plaintiff in error as administratrix of the succession of Joseph Fabacher, deceased, cannot be said to determine the fact or question of the domicil of said deceased.

Counsel for plaintiff in error will undoubtedly contend that, under the laws of Louisiana, a judgment appointing an administratrix is conclusive on the question of domicil of the deceased, and yet it is distinctly provided in the Louisiana Code, under the heading "Of the successions of persons domiciliated out of the state," as follows: "Art. 1220. *The successions of persons domiciliated out of the State of Louisiana, and leaving property in this state at their demise, shall be opened and administered upon as are those of the citizens of the state; and the judge before whom such succession shall be opened shall proceed to the appointment or confirmation of the officer to administer it under the name and in the manner pointed out by existing law.*" Revised Civil Code of La., Art. 1220.

It will be noticed that this alleged Federal question was for the first time attempted to be imported into this case by the brief of counsel for plaintiff in error, before the Court of last resort in Wisconsin; and this was so attempted notwithstanding the issues in the case involved only the validity of the will of the testator and his place of domicil at the time of his death.

In *Cornell* vs. *Green*, 163 U. S. 80, this Court say: "It is only when the constitutionality of a law of the United States is drawn in question, not incidentally, but necessarily and directly, that our jurisdiction can be invoked for that reason. An assignment of errors cannot be availed of to import questions into a cause which the record does not show were raised in the Court below and rulings asked thereon, so as to give jurisdiction to this Court under the 5th section of the Act of March 3d, 1891."

Referring to the opinion of the Supreme Court of Wisconsin (Record page 560 *et seq.*,) it will be readily seen that the main question that Court was called upon to decide, and which it did decide, was the question of fact as to the domicil of the testator.

That Court being requested by counsel for plaintiff in error to notice their point as to the alleged Federal question, for the first time there raised in their brief, did notice it in its

opinion and discussed it fully. But as will be seen the decision of the Wisconsin Supreme Court is one of *affirmance of the judgment of the Court below*, where the Federal question was not raised or hinted at. The judgment, therefore, brought in question in this Court by this writ is one resting upon the independent ground of *domicil of the testator* and the *legality of his will*, and does not involve a Federal question at all.

"Where a State Court, in rendering a judgment, decides a Federal question, and also decides against the plaintiff in error upon an independent ground, not involving a Federal question, and broad enough to support the judgment, this Court will dismiss the writ of error without considering the Federal question."

Rutland R. Co. vs. *Central Vt. R. Co.*, 159 U. S. 630.

Gillis vs. *Stinchfield*, 159 U. S. 660.

Seneca Nation vs. *Christy*, 162 U. S. 283.

Bacon vs. *State of Texas*, 163 U. S. 228.

It is also said in *Kennebeck & P. R. Co.* vs. *Portland & K. R. Co.*, 81 U. S. 23, "This Court will not entertain jurisdiction of state judgments where, beside the Federal question decided by the State Court, there is another and distinct ground on which the judgment can be sustained." See also *Rector* vs. *Ashley*, 73 U. S. 142.

And again in *Brooks* vs. *Missouri*, 124 U. S. 394, it is said: "Where a state decision of an alleged Federal question was not necessary to its judgment, but the Court also put its decision upon another ground not repugnant to the Federal laws or constitution, the United States Supreme Court has no jurisdiction."

A real, not a fictitious Federal question is essential to the jurisdiction of this Court over the judgments of State Courts.

Hamblin vs. *Western Land Co.*, 147 U. S. 532.

The record in this case shows conclusively that the actual domicil of Joseph Fabacher at the time of his decease was at Waukesha, Wisconsin. This having been duly adjudged and determined as a fact by the State Courts of Wisconsin where that question was fully litigated, will not be further questioned by this Court.

"No point has been more repeatedly and more authoratively settled than that this Court will not, upon a writ of error, revise or give judgment as to the facts, but takes them as found by the Court below, and as they are exhibited by the record."

Dower vs. *Richards*, 151 U. S. 666.

The domicil of said testator, Joseph Fabacher, at the time of his death, having been thus judicially determined to be at Waukesha, Wisconsin, it necessarily follows that the domicil of his minor children Magdalena and Jacob, was the same. Yet it is contended by counsel for the plaintiff in error that the judgment of the Parish Court of Louisiana appointing the plaintiff in error as administratrix of the succession of said deceased, is binding upon such minors domiciled in Wisconsin, without notice, and without the showing of any appointment or appearance of a guardian or other person to represent them in such Louisiana Court.

We contend that such judgment of appointment of said administratrix in and by said Louisiana Court, under such circumstances, is in no respect binding upon said minors domiciled in Wisconsin.

In the Wisconsin courts, on the other hand, when the first appearance and application for probate were made by the executor named in the will of said deceased, to-wit, on March 27th, 1897, the County Court for Waukesha County, Wisconsin, duly made an order appointing the undersigned as guardian *ad litem* for said minors, Magdalena and Jacob Fabacher, "for the sole purpose of appearing for them and taking care of their interests in the proceedings on said application." (Printed Record, page 3.) And the Record fully discloses that in all the proceedings thereafter had in the Wisconsin courts, said minors were present and represented by their said guardian.

Upon this state of the Record in this cause, said minors respectfully submit, through their undersigned guardian *ad litem*, that as to them there is no Federal question presented by this record, and none necessary to be decided. That the lower courts of Wisconsin having based their decision upon the question of domicil of the deceased and the validity of his will, and the Supreme Court of said state having merely affirmed such decision, it is entirely unnecessary for this Court to decide any Federal question, and under the rule of this Court in *Bacon* vs. *State of Texas*, 163 U. S. 228, and the cases there cited, the logical conclusion of this Honorable Court should be to dismiss the writ. And said minors, by and through their undersigned guardian *ad litem*, would therefore pray this Court to grant their motion and dismiss the writ of error.

D. S. TULLAR,

Guardian ad litem for Magdalena Fabacher and Jacob Fabacher, minors interested.

THORMANN *v.* FRAME.

ERROR TO THE CIRCUIT COURT OF THE COUNTY OF WAUKESHA STATE OF WISCONSIN.

No. 341. Submitted January 22, 1900. — Decided February 26, 1900.

The bare appointment of an executor or administrator of a deceased person by the courts of one State cannot be held, on principle or authority, to foreclose inquiry as to the domicil of the deceased in the courts of another State.

The general rule is that administration may be granted in any State or Territory where unadministered personal property of a deceased person is found, or real property subject to the claim of any creditor of the deceased.

The constitutional provision that full faith and credit shall be given in each State to the judicial proceedings in other States, does not preclude inquiry into the jurisdiction of the court, in which the judgment is rendered, over the subject-matter or the parties affected by it, or into the facts necessary to give such jurisdiction.

Statement of the Case.

JOSEPH Fabacher died March 3, 1897, in the city of New Orleans, leaving a last will and testament dated October 29, 1896, in which he described himself as of Waukesha, Wisconsin, where the will was executed and where he had a residence and a considerable amount of personal property. His widow and ten of his children were named as legatees and devisees. On March 27, 1897, A. J. Frame, appointed executor, presented the will for probate in the county court of Waukesha County, Wisconsin, alleging that it had been duly executed under the laws of Wisconsin, and that Joseph Fabacher was at the time of his decease "an inhabitant of the said county of Waukesha." Publication of the application was made according to law and the matter set for hearing May 4, 1897. On that day Antoinette Thormann, daughter of Fabacher by a prior marriage, appeared and objected to the admission of the instrument to probate, alleging herself to be, under the law of Louisiana, the sole heir of the deceased, and also setting forth matters, which, it was contended, would by the law of that State disqualify the beneficiaries named in the will from taking under it, and averring, as to Joseph Fabacher, that "continuously ever since 1843 up to and at the time of his death he, the said deceased, was domiciliated in the city of New Orleans, in the State of Louisiana, and an inhabitant and resident thereof, and that this court has no jurisdiction in the probate of said alleged last will and testament and in the settlement and distribution of said estate of said deceased." She further charged that any attempt on the part of Fabacher to acquire or create a domicil at Waukesha was in fraud of her rights; that the will was procured by undue influence; and that it was not duly executed in the manner and form required by law. It was conceded that Fabacher's adult children resided in New Orleans, but insisted that the domicil of the minor children was in Wisconsin, and a guardian *ad litem* was appointed as to them. Trial was had in the county court, which held the will in all respects valid; that at the time of his death and some time prior thereto, Joseph Fabacher was domiciled in the county of Waukesha, State of Wisconsin; and that the will was entitled to probate.

The case was then carried to the Circuit Court of Waukesha

Counsel for Parties.

County and there tried before a jury, who returned a verdict sustaining the will and finding the domicil of Joseph Fabacher at the time of his death, March 3, 1897, to have been at the city of Waukesha, whereupon the circuit court made findings of fact and conclusions of law and entered judgment admitting the will to probate and affirming the judgment to that effect of the county court. A large amount of testimony was introduced on these trials, and among other things it appeared that on March 29, 1897, Antoinette Thormann petitioned the civil district court for the parish of Orleans, Louisiana, to be appointed administratrix of the succession of Joseph Fabacher, her father, asserting that he "was at the time of his death and many years before a citizen of Louisiana, domiciled and residing in the city of New Orleans; that said deceased left property in this city and within the jurisdiction of this honorable court," and "that your petitioner is the sole surviving heir and legitimate child of said deceased, issue of his marriage with petitioner's mother. . . ." Letters of administration were granted by the court April 30, 1897.

The inventory stated the property of deceased as "one marble tomb in lot situated in St. Joseph cemetery, #2, bearing the inscription, 'Family of Joseph Fabacher;' also two (2) galvanized iron sofas and five (5) vases, valued by said appraisers at the sum of thirty-five hundred dollars ($3500)." An attempt was made to inventory some household effects, which, however, were claimed as the property of one of the sons.

From the judgment of the Circuit Court of Waukesha County an appeal was taken to the Supreme Court of Wisconsin, the judgment affirmed, and the record remanded to the Circuit Court. 102 Wisconsin, 653. A writ of error having been sued out from this court, motions to dismiss or affirm were submitted.

Mr. T. E. Ryan, *Mr. Charles F. Buck* and *Mr. D. S. Tullar* for the motion.

Mr. William A. Maury and *Mr. E. Howard McCaleb* opposing.

Opinion of the Court.

MR. CHIEF JUSTICE FULLER, after making the above statement of the case, delivered the opinion of the court.

The contention is that the issuing of letters of administration to Mrs. Thormann by the civil district court of the parish of Orleans was an adjudication that Fabacher was domiciled in that parish at the time of his death; that Mrs. Thormann was sole surviving heir; that he died intestate; that this adjudication was in all these respects conclusive against the world; and that the Wisconsin courts in admitting the will to probate did not give to the Louisiana proceedings that full faith and credit to which they were entitled under the Constitution and laws of the United States, and, therefore, denied a right secured thereby.

But it is objected that no such right was specially set up or claimed in the county and circuit courts, and this would appear to have been so. The Louisiana record was not pleaded, and seems to have been offered and admitted in evidence as tending to throw light on the question of domicil, and not as concluding it. Mrs. Thormann contested that question on the merits, and also denied the validity of the will in respect of its execution, and because of undue influence. As the Supreme Court was reviewing the decision below for errors committed there, it would ordinarily follow that error could not be predicated on the deprivation of a right which had not been asserted, and perhaps might properly be held to have been waived.

However, while we think that on this record there was color for the motion to dismiss, we shall decline to sustain that motion inasmuch as the Supreme Court in its opinion considered the particular question here presented, but will dispose of the case on the motion to affirm as the ruling of that court, so far as open to our examination, is so obviously correct, under the circumstances, that further argument is unnecessary.

The question before us is whether the Supreme Court deprived Mrs. Thormann of a right secured to her by the Constitution and laws of the United States in holding that her appointment as administratrix of the succession of Joseph

Fabacher was not a conclusive adjudication that Fabacher's domicil was at the time of his death in the parish of Orleans, Louisiana. The court said: "The record of the Louisiana court in evidence merely shows that the contestant was, after appropriate proceedings, appointed administratrix of the succession of the deceased, and that the inventory of the estate there presented consisted of the tomb, etc. There was no attempt in that court to adjudicate as to the property situated in Wisconsin nor as to the domicil of the deceased. That court, it may be conceded, had jurisdiction as to any tangible property actually located in the State. . . . Certainly there was no adjudication in the Louisiana court which precluded the county court of Waukesha County from taking jurisdiction and admitting the will to probate and administering so much of the estate as was actually located in Wisconsin, and this includes the bonds, mortgages and evidences of debt deposited in the Waukesha bank with the president thereof, who is executor of the will."

Fabacher's property in Wisconsin consisted of movables and immovables. His will was executed in that State in accordance with its laws, and was open to no objection for want of testamentary capacity. But Mrs. Thormann resisted the probate on the ground that the will was invalid by the law of Louisiana, and that that law must be applied in Wisconsin, because Louisiana was, and Wisconsin was not, the domicil of the deceased. We need not go into the rules and their exceptions governing such cases, for the issue as to Fabacher's domicil, raised by Mrs. Thormann in the Wisconsin proceedings to which she made herself a party, was regularly tried at large and determined against her. Nevertheless she contended in the state Supreme Court that the judgment below was erroneous as matter of law, because the question of domicil had been absolutely concluded by her appointment in Louisiana.

Yet the proceeding in Louisiana, instituted, it may be remarked, after the will was presented for probate in Wisconsin, amounted to no more than an *ex parte* application for letters of administration and a grant thereof. Doubtless the desti-

nation of the tomb and accompanying seats and vases was thereby fixed, but not that of property in Wisconsin; nor can the bare appointment be held, on principle or authority, to foreclose inquiry into the fact of domicil in the courts of another sovereignty.

The technical distinction between an original and an ancillary administration is unimportant here.

Whatever the effect of the appointment, it must be as a judgment and operate by way of estoppel. Now a judgment *in rem* binds only the property within the control of the court which rendered it; and a judgment *in personam* binds only the parties to that judgment and those in privity with them. This appointment cannot be treated as a judgment *in personam*, and as a judgment *in rem* it merely determined the right to administer the property within the jurisdiction, whether considered as directly operating on the particular things seized, or the general status of assets there situated.

In this country the general rule is, "that administration may be granted in any State or Territory where unadministered personal property of a deceased person is found, or real property subject to the claim of any creditor of the deceased." 1 Woerner on Administration, (2d ed.) § 204.

As to successions, the law of Louisiana provides as follows (Code of Practice, 1899):

"Art. 929. The place of the opening of successions is fixed as follows:

"In the parish where the deceased resided, if he had a domicil or fixed place of residence in this State.

"In the parish where the deceased owned immovable property, if he had neither domicil or residence in this State, or in the parish in which it appears by the inventory, his principal effects are, . . . if he have effects in different parishes.

"In the parish in which the deceased has died, if he had no fixed residence, nor any immovable effects within this State, at the time of his death."

The order of appointment by the Louisiana court did not make, nor did the letters themselves recite, any finding as to Fabacher's last domicil, and as he died in the parish of

Orleans, and owned, as contended, immovable property, and effects, there, such a finding was wholly unnecessary to jurisdiction, and is not to be presumed.

In *De Mora* v. *Concha*, 29 Ch. Div. 268, it was held that the decree of a probate court was not conclusive *in rem* as to domicil, although the fact was found therein, because it did not appear that the decree was necessarily based on that finding; and it was doubted whether the findings on which judgments *in rem* are based are in all cases conclusive against the world. The decision was affirmed in the House of Lords. 11 App. Cas. 541. The case is a leading and instructive one, was ably argued, and has been repeatedly followed since the judgment was pronounced.

In *Brigham* v. *Fayerweather*, 140 Mass. 411, conclusive effect to judgments in probate proceedings in respect of their grounds was denied altogether.

Again, it is thoroughly settled that the constitutional provision that full faith and credit shall be given in each State to the judicial proceedings of other States, does not preclude inquiry into the jurisdiction of the court in which the judgment is rendered, over the subject-matter, or the parties affected by it, or into the facts necessary to give such jurisdiction. *Thompson* v. *Whitman*, 18 Wall. 457; *Cole* v. *Cunningham*, 133 U. S. 107; *Grover and Baker Sewing Machine Co.* v. *Radcliffe*, 137 U. S. 287; *Simmons* v. *Saul*, 138 U. S. 439; *Reynolds* v. *Stockton*, 140 U. S. 254; *Cooper* v. *Newell*, 173 U. S. 555.

The point before us is a narrow one, but in any aspect in which it may be considered we are unable to assent to the view that the Supreme Court of Wisconsin was bound to treat the proceeding in Louisiana as conclusively determining the question of domicil; and unless it was so bound its decision deprived plaintiff in error of no right secured to her by the Constitution and laws of the United States.

Judgment affirmed.